

2010

CoBon Energy, LLC v. AGTC, Inc.; et al. : Brief of Appellant

Utah Court of Appeals

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Evan A. Schmutz; Wm. Kelly Nash; Hill, Johnson & Schmutz; Anthony W. Schofield; Kirton & McConkie; Attorneys for Appellees.

E. Scott Savage; Stephen R. Waldron; Kyle C. Thompson; Savage, Yeates & Waldron; Attorneys for Appellants .

Recommended Citation

Brief of Appellant, *CoBon Energy v. AGTC*, No. 20100236 (Utah Court of Appeals, 2010).
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IN THE UTAH COURT OF APPEALS

-----ooOoo-----

CoBon Energy, LLC,)	
)	Appellate Court No. 20100236-CA
Plaintiff,)	
v.)	
)	
AGTC, Inc.; et al.,)	
)	
Defendants.)	
_____)	
AGTC, Inc. and Alpine Coal Co., Inc.,)	
)	
Counterclaimants)	
and Appellants,)	
v.)	
)	
CoBon Energy, LLC; et al.)	
)	
Counterdefendants)	
and Appellees,)	

ADDENDUM TO BRIEF OF APPELLANTS

**APPEAL FROM ORDER OF SUMMARY JUDGMENT AND DISMISSAL FROM
THE FOURTH JUDICIAL DISTRICT COURT, UTAH COUNTY, THE
HONORABLE JAMES R. TAYLOR PRESIDING**

Evan A. Schmutz
Wm. Kelly Nash
HILL, JOHNSON & SCHMUTZ, P.C.
4844 N. 300 West, #300
Provo, Utah 84604

Anthony W. Schofield
KIRTON & McCONKIE
518 West 800 North, #204
Orem, Utah 84057
Attorneys for Appellees

E. Scott Savage
Stephen R. Waldron
Kyle C. Thompson
SAVAGE, YEATES & WALDRON
170 South Main Street, Suite 500
Salt Lake City, Utah 84101
Attorneys for Appellants

FILED
UTAH APPELLATE COURT
NOV 2 - 2010

IN THE UTAH COURT OF APPEALS

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)	Appellate Court No. 20100236-CA
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4844 N. 300 West, #300
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KIRTON & McCONKIE
518 West 800 North, #204
Orem, Utah 84057
Attorneys for Appellees

E. Scott Savage
Stephen R. Waldron
Kyle C. Thompson
SAVAGE, YEATES & WALDRON
170 South Main Street, Suite 500
Salt Lake City, Utah 84101
Attorneys for Appellants

ADDENDUM INDEX

<u>TAB</u>	<u>ITEM</u>
A	March 1, 2010 Order On Partial Summary Judgment In Favor of CoBon Energy, LLC As To All Counterclaims and Order Of Dismissal With Prejudice In Favor Of Counterdefendants As To All Counterclaims
B	June 28, 2000 Settlement Agreement and Release, between Viron Energy and Robena, LLC
C	November 1, 1996 Consulting Agreement, between CoBon Energy, L.L.C. and AGTC, Inc. and Alpine Coal Co., Inc.
D	July 1, 1998 Letter Agreement
E	December 22, 2008 AGTC, Inc. and Alpine Coal Co., Inc.'s Answer to First Amended Complaint and First Amended Counterclaim
F	March 27, 1998 Letter from Viron Energy to Steve Nash and Robert Dulebohn at Robena, L.L.C.
G	April 10, 1998 Letter from Steven Nash at Robena, L.L.C. to Rick Visovsky at AGTC, Inc.
H	May 8, 1998 Letter from Steven Nash at CoBon Energy, L.L.C. to Rick Visovsky at AGTC, Inc. and Mark Rodak at Alpine Coal Co., Inc.
I	May 12, 1998 Fax from Rick Visovsky at AGTC, Inc. to Steve Nash at CoBon Energy
J	May 12, 1998 Letter from Mark Rodak at Alpine Coal Co., Inc. to Steven Nash at CoBon Energy
K	May 18-19998 Letter of Understanding
L	June 25, 1999 Letter from Steve Nash at CoBon Synfuel No. 2, L.L.C. to Robert Dulebohn at Providian Financial Services
M	July 1, 1999 Letter from Steven R. Nash at CoBon Synfuel No. 2, L.L.C. to Gordon Deane at Palmer Management Corporation

ADDENDUM INDEX

<u>TAB</u>	<u>ITEM</u>
N	July 29, 1999 Letter from Steven R. Nash at CoBon Synfuel No. 2, L.L.C. to Robert Dulebohn at Providian Financial Services
O	August 26, 1999 Letter from Steven Nash at Robena, L.L.C. to Gordon Deane at Palmer Management Corporation [with attached invoices and past due letters from various venders, including Viron Energy]
P	September 1, 1999 Letter from Mark Rodak at Viron Energy to Robena, L.L.C.
Q	September 1, 1999 Letter from Steven Nash at CoBon Synfuel #2, L.L.C. to Gordon Deane at Palmer Management Corporation
R	November 10, 1999 Letter from Mark Rodak at Viron Energy to Robena, L.L.C.
S	November 24, 1999 Notice [of lawsuit] and Complaint in the Court of Common Pleas, Cumberland County, Pennsylvania, <i>Viron Energy v. Robena, L.L.C.</i> , No. 1999-7141
T	February 16, 2000 Letter from Steven Nash at CoBon Synfuel #2, L.L.C. to Robert T. Dulebohn at Providian Financial Corporation
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W	May 24, 2000 Letter from Steven Nash at CoBon Energy, L.L.C. to Rick Visovsky at AGTC enclosing advance payment for Pace and/or PBS Tax Credit Payments
X	May 24, 2000 Letter from Steven Nash at CoBon Energy, L.L.C. to Mark Rodak at Alpine Coal Company, Inc. enclosing advance payment for Pace and/or PBS Tax Credit Payments

ADDENDUM INDEX

<u>TAB</u>	<u>ITEM</u>
Y	July 22, 2002 AGTC, Inc. & Alpine Coal Company, Inc. Contractual Entitlement in Accordance with Consulting Agreement dated December 5, 1996 and Allocation of CoBon License Agreement Capacity
Z	November 10, 2002 Letter from Steven Nash at CoBon Energy, L.L.C. to Mark Rodak at Alpine Coal Company, Inc. enclosing copy of Complaint filed by <i>CoBon Energy, LLC v. AGTC, Inc. and Alpine Coal Co., Inc., and Richard G. Visovsky</i> , Civil No. 020912528, dated November 8, 2002 in the Third Judicial District Court for Salt Lake City
AA	November 7, 2008 Affidavit of Mark J. Rodak Regarding Motions for Summary Judgment
BB	November 7, 2008 Affidavit of Richard G. Visovsky Regarding Motions for Summary Judgment

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of November, 2010 I caused two copies of the foregoing **ADDENDUM TO BRIEF OF APPELLANTS** to be mailed, postage prepaid, to the following:

Evan A. Schmutz
Wm. Kelly Nash
HILL, JOHNSON & SCHMUTZ, P.C.
4844 N. 300 West, #300
Provo, Utah 84604

Anthony W. Schofield
KIRTON & McCONKIE
518 West 800 North, #204
Orem, Utah 84057

Attorneys for Appellees



Tab A

Anthony W. Schofield (2882)
Peter C. Schofield (9447)
KIRTON & McCONKIE
518 West 800 North, Suite 204
Orem, UT 84057
Telephone: (801) 426-2100
Facsimile: (801) 426-2101

*Attorneys for Steven R. Nash, Robert I. Nash, Wm. Kelly
Nash and Anton Tonc, CB Ventures, LLC and
CE Ventures, LLC,*

Evan A. Schmutz (3860)
Wm. Kelly Nash (4888)
Curtis R. Hussey (5488)
HILL, JOHNSON & SCHMUTZ, L.C.
RiverView Plaza, Suite 300
4844 North 300 West
Provo, Utah 84604
Telephone: (801) 375-6600
Facsimile: (801) 375-3865

*Attorneys for CoBon Energy, LLC and CoBon
Synfuel Entities*

FILED

MAR 1 2010

4TH DISTRICT
STATE OF UTAH
UTAH COUNTY

IN THE FOURTH JUDICIAL DISTRICT COURT

IN AND FOR COUNTY OF UTAH, STATE OF UTAH

COBON ENERGY, LLC, a Utah limited
liability company,

Plaintiff,

vs.

AGTC, INC., a foreign corporation, ALPINE
COAL CO., INC., a foreign corporation, and
RICHARD G. VISOVSKY, individually, and
dba AGTC, VIRON, and VIRON ENERGY

**ORDER OF PARTIAL SUMMARY
JUDGMENT IN FAVOR OF COBON
ENERGY, LLC AS TO ALL
COUNTERCLAIMS AND ORDER OF
DISMISSAL WITH PREJUDICE IN
FAVOR OF COUNTERDEFENDANTS
AS TO ALL COUNTERCLAIMS**

Civil No.: 060402937

and MARK RODAK, individually, and dba
Alpine Coal Co., Inc., VIRON, and VIRON
ENERGY,

Defendants.

Judge: James R. Taylor

This matter came on for hearing before the Court on January 11, 2010, and specifically
for oral argument respecting:

- 1) CoBon Energy, LLC's ("CoBon") pending Motion for Partial Summary Judgment
Re: Release ("Motion Re: Release"); and
- 2) Counterdefendants CoBon Synfuel #1, LLC, CoBon Synfuel #2, LLC, CoBon
Synfuel #3, LLC and CoBon Synfuel #4, LLC ("Synfuel Entities"), CB Ventures,
LLC, CE Ventures, LLC ("Venture Entities") and Steven R. Nash, Robert I.
Nash, Wm. Kelly Nash and Anton Tonc's ("Individual Counterdefendants")
(collectively, "Counterdefendants") Motions to Dismiss Amended Counterclaim
("Motion to Dismiss").

CoBon and the Synfuel Entities were represented by Evan A. Schmutz and Wm. Kelly Nash of
Hill, Johnson & Schmutz. The Venture Entities and Individual Counterdefendants were
represented by Anthony W. Schofield of Kirton & McConkie. Defendants Alpine Coal Co., Inc.
("Alpine"), AGTC, Inc. ("AGTC"), Richard G. Visovsky ("Visovsky") and Mark R. Rodak
("Rodak") (collectively, "Defendants") were represented by E. Scott Savage and Stephen R.
Waldron.

Having reviewed the pleadings and papers filed in support of and opposition to the
foregoing motions and having received the extensive oral arguments of counsel for the parties,
and good cause appearing based thereon, the Court issued a bench ruling granting the Motion
Re: Release (i.e., entering a partial Summary Judgment in favor of CoBon and against
Defendants), granting the Motion to Dismiss (i.e., entering an order of dismissal with prejudice

in favor of Counterdefendants and against Defendants), and concluding that in light of the Court's ruling that all other pending motions were rendered moot.

The Court now enters the following Findings of Fact, Conclusions of Law and orders, consistent with the bench ruling:

Findings of Undisputed Fact

1. On or about December 5, 1996, CoBon entered into a Consulting Agreement with Alpine and AGTC. The Consulting Agreement provides, *inter alia*, that Alpine and AGTC would provide project development services, including consultation and assistance regarding the identification, evaluation, and obtaining of suitable raw material resources, the selection of suitable briquette facility site locations, the construction and management of an adequate briquette plant and operation, the negotiation and acquisition of coal products, sales products, the securing the site permits, the confirmation of regulatory compliance regarding all aspects of plant operation. The Consulting Agreement plainly and clearly included the preparation, location, start up, management and operation of the Robena, Pace and PBS synfuel manufacturing facilities ("Plants"). The operation and development of the Plants and other operations under the Consulting Agreement are all related and the services of Defendants related to any and all Plants were described in the Consulting Agreement.

2. At all material times in attempting to provide services under the Consulting Agreement, Alpine and AGTC were also variously known as "Viron Energy" or "Viron", an unregistered partnership or joint venture name selected by Rodak and Visovsky and under which Defendants also did business. Viron or Viron Energy is a dba of Alpine and AGTC and the

Defendants, who were working together. For all purposes in this action, Viron and/or Viron Energy are synonymous with the Defendants, both collectively and separately.

3. Following execution of the Consulting Agreement, a dispute arose between CoBon and Defendants concerning an alleged failure and/or refusal by Defendants to provide a source of suitable raw materials for start up operations at the Robena plant as required under the Consulting Agreement.

4. CoBon and Defendants under the name Viron entered the May 8, 1998 Letter of Understanding ("5/8/98 LOU"). The 5/8/98 LOU memorialized the parties' dispute and clearly and plainly put the interpretation of the scope of the Consulting Agreement at issue. In the 5/8/98 LOU, CoBon expressly reserved its rights regarding Defendants' alleged breaches of the Consulting Agreement and performance requirements thereof. In the 5/8/98 LOU, CoBon consistently insisted that Defendants' demand for additional money was improper and that Defendants were already being compensated for their services under the Consulting Agreement. Specifically, CoBon insisted that the additional money demanded be resolved in the 5/8/98 LOU and that such was part of the already established compensation for Defendants' services under the Consulting Agreement. Although CoBon agreed to pay compensation, it did so under an express reservation of rights to treat the payment as an advance or otherwise not due under the Consulting Agreement.

5. The subsequent May 18, 1998 Letter of Understanding (i.e., signed May 19, 1998) ("5/19/98 Letter of Understanding") and 7/1/98 Letter Agreement do not relevantly change the fundamental agreement that was specified in the 5/8/98 LOU.

6. Following and pursuant to the 5/8/98 LOU, CoBon, through its affiliate Robena, LLC, paid \$180,000 to Defendants. Robena, LLC discontinued payments to Defendants. A dispute arose over the discontinuance of the payments.

7. On November 24, 1999, Alpine and AGTC aka Viron Energy filed a lawsuit in the Court of Common Pleas, Cumberland County, Pennsylvania, entitled Viron Energy v. Robena, LLC, (“Civil Action”) against Robena, LLC to collect monies allegedly owed to them. The Civil Action was based upon the 5/8/98 LOU and clearly and plainly put the interpretation of the scope of the Consulting Agreement at issue. The assertion of Defendants that they had performed all requisite services under the Consulting Agreement was also plainly part of the issues raised in the Civil Action. Paragraph three of the Civil Action Complaint asserts that Robena, LLC entered into the 5/8/98 LOU with Viron Energy, through its agent CoBon, and a copy of the 5/8/98 LOU was attached to the Complaint. Robena and CoBon are both implicated and acknowledged as having identical issues in the Civil Action and the Civil Action clearly refers to CoBon and its assigns. The scope and performance of the Consulting Agreement were squarely implicated in the Civil Action and the contingency payments to be made in the future under the Consulting Agreement were also in play in the Civil Action.

8. On June 28, 2000, Defendants entered into a Settlement Agreement and Release (“Release”) with and relating to Robena, LLC, CoBon and CoBon’s affiliates, members, officers, attorneys and other related persons, including Steven R. Nash, Robert I. Nash, Wm. Kelly Nash and Anton Tonc. Defendants released their claims in consideration of the additional payment of \$60,000.

9. The Release is both integrated and unambiguous, and the terms of settlement thereof were supported by consideration. Defendants negotiated and accepted the compensation described therein in exchange for a release and discharge of the disputed claims and any and all claims they had relating to the Consulting Agreement. The Release is a binding and enforceable agreement. The plain result of the Release is that Defendants accepted the compensation described in exchange for disputed claims under the Consulting Agreement.

Conclusions of Law

1. The scope and performance of the Consulting Agreement were squarely implicated in the Civil Action, including any future contingency payments (i.e., of consulting fees) under the Consulting Agreement.

2. The relevant parties to this action were parties to the Release and were specifically named or identified as Released Parties in the Release. The Release, by its specific terms, clearly identifies CoBon and each of the Counterdefendants as Released Parties. The Release clearly releases and discharges, *inter alia*, CoBon, Steve Nash, Robert Nash and Synfuel #2, and clearly releases, by definition and plain scope of the reading, Kelly Nash and Anton Tonc, as employees, officers or agents from any and all counterclaims asserted in this action by Defendants, including any related liabilities or obligations to Viron Energy.

3. There is no basis to limit the plain scope of the Release. The interpretation of the terms of the Release or readings suggested by Defendants are strained and would require the Court to ignore the plain meaning of the contract. Such are unsupported and contrary to and ignore the plain meaning of the Release. In plain and unambiguous language, the Release forever discharged and released the Released Parties:

from any and all claims, counterclaims, debts, actions, judgments, and causes of action which relate to or arise out of any consulting services which have been performed by Viron regarding the Robena Synthetic Fuel Plant (the “Project”) including, without limitation, claims asserted in, or that could have been asserted in, the Civil Action.

4. The scope of the Civil Action included and/or related to development and related work on the Robena, Pace and PBS Plants as well as other plants.

5. The counterclaims that Defendants have asserted in this case against CoBon and Counterdefendants relate to or arise out of consulting services that Defendants performed regarding the Robena Plant, and with respect to the position that Defendants are asserting in this case, all of Defendants’ claims arise out of and are defined by the Consulting Agreement. The three Plants or projects concerning which Defendants have asserted counterclaims are Pace, PBS and Robena and these Plants or projects are related to the consulting services Defendants agreed to provide under the Consulting Agreement. All of the projects worked on or developed by CoBon which produced any revenue are all related together under the Consulting Agreement. Defendants’ services in connection with the Pace, the PBS and Robena Plants or projects arise out of and relate to the CoBon Consulting Agreement.

6. The Release is binding and enforceable against Defendants and operates to release and discharge each and every counterclaim, as amended, asserted herein by Defendants against CoBon and/or the Counterdefendants as a matter of law.

7. CoBon is entitled to entry of a partial summary judgment in its favor, as more particularly sought in the Motion Re: Release, specifically barring each and every counterclaim, as amended, asserted herein by Defendants against CoBon as a matter of law.

8. Counterdefendants are each entitled to entry of an order of dismissal with prejudice in their favor, respectively, as more particularly sought in the Motions to Dismiss, specifically dismissing with prejudice each and every counterclaim, as amended, asserted herein by Defendants against Counterdefendants as a matter of law.

9. The separate civil action commenced on September 22, 2009 in the Utah Fourth Judicial District Court and entitled *AGTC, Inc. v. CoBon Energy, LLC, et. al.*, Civil No. 090403541 (i.e., assigned to Judge Howard) (the “Second Action”) is also hereby dismissed with prejudice, by reason of this Court’s prior November 13, 2009 bench ruling consolidating the Second Action herewith. CoBon and the Counterdefendants are each entitled to entry of an order of dismissal with prejudice in their favor, respectively, specifically dismissing with prejudice each and every claim asserted against them by Alpine and AGTC in the Second Action as a matter of law.

10. The Court concludes (and the parties, through their counsel, have acknowledged during oral argument) that there are no genuine issues of material fact relating to the existence and/or enforceability of the following agreements:

- (a) the December 5, 1996 Consulting Agreement,
- (b) the 5/8/98 LOU,
- © the 5/19/98 Letter of Understanding, and/or
- (d) the 6/28/00 Release,

The Court concludes that no genuine issue of material fact would prevent this Court from deciding this matter as a matter of law and concludes that the Court may interpret the terms of the Release, which are unambiguous, and/or otherwise decide this matter, as a matter of law.

Order

Based upon the foregoing and good cause appearing, IT IS HEREBY ORDERED:

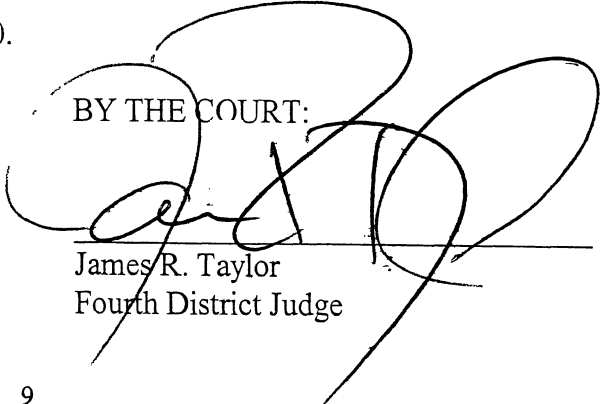
1. **The Motion Re: Release is granted.** Partial summary judgment is hereby entered in favor of CoBon, as more particularly sought in the Motion Re: Release, and specifically barring as having been released and discharged each and every counterclaim, as amended, asserted herein by Defendants against CoBon as a matter of law.

2. **The Motion to Dismiss is granted.** An order of dismissal with prejudice is hereby entered in favor of Counterdefendants, and each of them, as more particularly sought in the Motion to Dismiss, and specifically dismissing with prejudice as having been released and discharged each and every counterclaim, as amended, asserted herein by Defendants against Counterdefendants as a matter of law.

3. The Court expressly reserves the right to enter such further order as may hereafter be determined to be appropriate by the Court, including respecting CoBon and Counterdefendants' requests, if any, for attorneys' fees and costs pursuant to the terms of the Consulting Agreement, Release, the August 25, 2006 Settlement Agreement, the Motion Re: Release and/or Motion to Dismiss. Nothing herein shall be construed as limiting CoBon's right to proceed with its claims against Defendants hereafter.

DATED this 1 day of ^{March}~~February~~, 2010.

BY THE COURT:


James R. Taylor
Fourth District Judge

Approved as to Form:

E. Scott Savage, Esq.
Stephen R. Waldron, Esq.
Attorneys for Defendants

Anthony W. Schofield, Esq.
Attorneys for Venture Entities and
Individual Counterdefendants

CERTIFICATE OF SERVICE

I hereby certify that on this 12 day of February, 2010, I caused a true and correct copy of the foregoing to be served on the following:

E. Scott Savage, Esq.
Stephen R. Waldron, Esq.
Savage, Yeates & Waldron
170 South Main Street, Suite 500
Salt Lake City, UT 84101

Method of service:

- ☒ First Class Mail, postage prepaid
☐ Hand delivery
☒ Facsimile

Hailey Gruen

Tab B

EXHIBIT 163
FOR IDENTIFICATION
DATE
AMANDA RICHARDS, CSR

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE is made by and between Viron Energy, a Pennsylvania general partnership and Robena, LLC, a Delaware limited liability company.

WITNESSETH:

WHEREAS, certain claims, counterclaims and disputes have arisen between Viron Energy ("Viron") and Robena, LLC ("Robena") (collectively, the "Parties") including, without limitation, an action captioned Viron Energy vs. Robena, LLC, CV NO. 7141-1999, in the Court of Common Pleas of Cumberland County, Pennsylvania, ("Civil Action"); and

WHEREAS, the Parties now desire to settle the claims, counterclaims and disputes between and among them;

NOW THEREFORE, in consideration of the foregoing and the payment by Robena to Viron of sixty thousand dollars (\$60,000.00) ("Settlement Amount") by a date on or before July 1, 2000 the Parties agree as follows:

1. Release. For purposes of this agreement, the term "Released Parties" shall mean the Parties and include each of the named corporations and/or business entities and each of the named entity's subsidiaries, past, present or future parent or affiliated companies and/or entities, and each of their respective past, present or future predecessors, successors, departments, divisions, shareholders, partners, underwriters, insurers, directors, attorneys, officers, reinsurers, servants, employees, agents, managers, members and assigns including, without limitation, Providian Services LLC, Robena LP, Palmer Management Corporation, Palmer Capital Corporation, Coalco Corporation, Cobon Synfuel #2, LLC, Cobon Energy, LLC, Steven R. Nash, Robert Nash, Donald Dargic, Gordon L. Deane, AGTC, Inc., Alpine Coal Co., Inc., Mark Rodak and Richard Visovsky. The Parties do hereby release and forever discharge each other,

the Released Parties and their respective heirs, administrators, executors, agents and assigns, from any and all claims, counterclaims, debts, actions, judgments, and causes of action which relate to or arise out of any consulting services which have been performed by Viron regarding the Robena Synthetic Fuel Plant (the "Project") including, without limitation, claims asserted in, or that could have been asserted in, the Civil Action.

2. Civil Action. Upon execution of this Settlement Agreement and Release, and upon payment of the Settlement Amount to Viron, Viron, through its attorney, will file a praecipe to discontinue all claims in the Civil Action, in the form attached hereto as Exhibit A.

3. Disputed Claims. This Settlement Agreement and Release is a compromise and does not constitute an admission of liability or fault or of any material fact by any party.

4. Binding Agreement. This Settlement Agreement and Release shall be binding upon and shall inure to the benefit of the Parties hereto.

5. Representation, Warranty and Indemnity. Each party represents and warrants to the other party that it has not made any assignment or other transfer of any interest in any claim or judgment it may have against the other party which could or would (a) require any party to obtain the consent of any nonparty (including without limitation an assignee or transferee) to execute, deliver or perform under this Settlement Agreement and Release, (b) deprive any party of the full right, power and authority to execute, deliver and perform under this Settlement Agreement and Release, or (c) preserve any portion of any claim or judgment from being fully and finally released, settled and extinguished hereby. Each party shall indemnify, hold harmless and defend the other party and the Released Parties from and against any liability, claim, demand, damage, cost or expense (including reasonable attorneys' fees) incurred as a result of any assignment or transfer by it of any interest in any claim or judgment which it may have against the other party or the Released Parties.

6. Severability. If any term, covenant, provision, paragraph or condition of this Settlement Agreement and Release shall be illegal or unenforceable, such illegality or

unenforceability shall not invalidate the entire Settlement Agreement and Release; rather, this Settlement Agreement and Release shall be construed as if the illegal or unenforceable part were not contained herein, and the rights and obligations of the parties shall be construed and enforced accordingly.

7. Entire Understanding. This Settlement Agreement and Release represents the entire understanding of the Parties hereto and supersedes all prior written or oral agreements, representations or understandings, if any, relating to the subject matter hereof.

8. Governing Law. The rights and obligations of the parties under this Settlement Agreement and Release shall be governed by the laws of the Commonwealth of Pennsylvania without reference to principles of conflicts of law.

9. Captions. The captions inserted herein are for convenience only, and in no way define, limit or expand the scope of this Agreement.

10. Counterparts. This Settlement Agreement and Release may be executed in any number of counterparts, all of which shall together constitute a single agreement.

11. Enforcement. This Settlement Agreement and Release may be enforced in any court of competent jurisdiction. In the event that any party commences a judicial action against any other party, the "Prevailing Party" shall be entitled to payment from the opposing party of its reasonable costs and fees, including but not limited to attorneys' fees, arising from the civil action. As used herein, the phrase "Prevailing Party" shall mean the party who, in the reasonable discretion of the finder of fact, most substantially prevails in its claims or defenses in the civil action. The Parties further agree that upon the occurrence of a breach of any of the representations, warranties and agreements contained in this Settlement Agreement and Release, the non-breaching party may resort to all remedies available at law or in equity, including without limitation: (i) specific performance of the provisions of this Agreement; and (ii) the recovery of damages.

12. Authority. By their signatures affixed hereto, each of the parties acknowledges that it has read this Settlement Agreement and Release, fully understands the obligations, conditions, guarantees, warranties, indemnities and terms contained herein, and has had the advice of counsel pertaining thereto, prior to the time of execution. Further, the individuals signing this Settlement Agreement and Release on behalf of business entities, state and represent that they are duly authorized to enter into this Settlement Agreement and Release on behalf of their respective business entities.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement and Release on the date on which the last signature of the Parties is affixed below.

ROBENA, LLC

ATTEST:

Laurie Jones

By:

[Signature]

Date: 6/28/00

Title:

Manager

VIRON ENERGY

ATTEST:

Margaret Lucas

By:

[Signature]

Date: 6/28/00

Title:

Partner

EXHIBIT A
FORM OF PRAECIPE

VIRON ENERGY,	:	IN THE COURT OF COMMON PLEAS
	:	CUMBERLAND COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
ROBENA, L.L.C.,	:	
	:	No. CV-7141-1999
Defendant	:	

PRAECIPE

To the Prothonotary:

Please mark the above-captioned action discontinued, with prejudice.

Date:

 Craig Shagin, Esq.
 Shagin & Anstine
 100 Pine Street, Suite 260
 Harrisburg, PA 17101

 Attorney for plaintiff, Viron Energy

Tab C

CONSULTING AGREEMENT

This CONSULTING AGREEMENT ("Agreement") is entered into to be effective November 1, 1996 by and between CoBon Energy, L.L.C., located at 1145 East South Union Ave., Midvale, UT 84047 ("CoBon") and AGTC, Inc., located at 7 Oakwood Way, Robbinsville, NJ 08691 and Alpine Coal Co., Inc., located at 3920 Market Street, Camp Hill, PA 17011 (collectively "A & A").

Recitals

Whereas, CoBon has entered into a License Agreement with Covol Technologies, Inc. ("Covol") and has acquired the right to use a proprietary "Coal Technology" as defined therein in connection with coal briquette manufacturing operations to be developed hereafter by CoBon;

Whereas, A & A is an independent contractor, is knowledgeable of the coal industry, has experience in the development and marketing of coal and related products, and is acquainted with representatives of numerous large coal producing and consuming companies, including individuals and entities who may have an interest in participating as potential suppliers, purchasers, developers, operators, contractors, investors or affiliates with respect to coal briquette manufacturing facilities to be developed hereafter by CoBon; and

Whereas, CoBon desires to receive consultation and assistance from A & A and A & A desires to provide consultation and assistance to CoBon in connection with the development and exploitation of briquette manufacturing facilities utilizing the proprietary Coal Technology;

Agreement

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the parties agree as follows:

1.0 Consulting Services and Project Development Assistance. A & A, at its own expense, agrees to and shall (i) furnish CoBon with necessary and reasonable consulting services and assistance in furtherance of CoBon's identification, evaluation, development and construction of briquette manufacturing facilities (including suitable sites and plants) capable of producing coal briquettes and related products utilizing the Coal Technology, which will qualify for I.R.C. Section 29 tax credits for up to an eleven (11) year time

period or such longer term as may be allowed by Congressional extension hereafter, and (ii) furnish CoBon with necessary and reasonable services and assistance in connection with the marketing of the coal briquettes and related products, and the manufacturing facilities, to third party purchasers, all as specified herein, including paragraph 1.2.

1.1 Noncompetition and Confidentiality. In furnishing consultation and assistance as reasonably requested by CoBon and in furtherance of CoBon's development of briquette manufacturing facilities, A & A expressly acknowledges the trust and confidence CoBon has placed in A & A. In keeping with this trust and confidence, A & A shall act in the best interests of CoBon, shall utilize its best efforts to promote the good will of CoBon, shall perform services on behalf of CoBon in accordance with the express directives and authorizations of, and subject to the approval of, CoBon, and shall not compete directly or indirectly with CoBon without prior written authorization.

A & A expressly acknowledges its understanding with respect to the confidential and proprietary nature of CoBon's development efforts and further acknowledges its intent and agreement to abide by the terms and conditions of the parties' Confidentiality and Nondisclosure Agreement dated November 3, 1995, which is incorporated herein by this reference.

1.2 Project Development. A & A shall devote such consulting time and resources as are reasonably required to assist and support CoBon in connection with the identification, evaluation and obtaining of suitable raw material resources, the selection of suitable briquette facility site locations, the construction and management of an adequate briquette plant and operation, the negotiation and acquisition of coal product sales contracts, the securing of site permits and confirmation of regulatory compliance respecting all aspects of plant operation. A & A shall cooperate fully with CoBon and shall provide bi-monthly progress reports to CoBon with respect to its efforts and the status of project development.

Notwithstanding A & A's foregoing agreement to assist and support CoBon, nothing herein shall be construed as requiring A & A (i) to finance the construction or management of briquette manufacturing facilities, (ii) to pay site permit or regulatory compliance related fees and costs or (iii) to furnish construction labor or direct management of briquette manufacturing facilities. A & A shall be solely responsible to furnish reasonably requested consultation in connection with these undertakings by CoBon.

1.3 Development Schedule. A & A and CoBon acknowledge that binding construction agreements required for purposes of satisfying Section 29 tax credit qualification must be negotiated and executed by CoBon, or its assigns, no later than December 31, 1996 or such earlier time as may be required by statute. Similarly, CoBon's development of any facility site(s) and plant(s) shall be completed on or before a target production deadline of July 1, 1998 ("Production Date") or such earlier date as CoBon may determine to be commercially reasonable. Consultation and assistance by A & A hereunder shall be furnished so as to facilitate CoBon's completion of the agreement(s) and development of the project(s) in accordance with the foregoing schedule.

2.0 Consulting Fee. In consideration of its performance of the provisions hereof, A & A shall be entitled to receive a consulting fee equal to thirty percent (30%) (to be split evenly between AGTC and Alpine) of the cash proceeds and other consideration (including stock, tax credits distributed or retained, etc.) received by CoBon for tax credits (collectively referred to as "Proceeds") generated by virtue of CoBon's sublicense (or other form of transfer, assignment or business agreement) of the Coal Technology to third party purchaser(s) of the briquette manufacturing facility(ies) ("Consulting Fee"). Subject to the provisions of paragraph 4.0, the Consulting Fee shall be paid from such Proceeds as provided herein.

2.1 Escrow Period/Consulting Fee Payment. Upon receipt of the Proceeds and during the initial two years that Proceeds are received for tax credits, CoBon shall place 100% of the cash portion of such Proceeds (which includes both A & A's 30% interest and CoBon's remaining 70% interest therein) into an interest-bearing holding account with said cash Proceeds to be distributed to the parties only after completion by CoBon of a good faith evaluation and satisfactory confirmation of the availability of tax credit qualification by the Internal Revenue Service (i.e., may include private letter ruling issuance) to the purchaser. A & A shall be advised with respect to the status of the evaluation and confirmation process and shall consult with CoBon respecting the process. Unless consented to in writing by A & A, CoBon shall not be entitled to withdraw and/or distribute any portion of its 70% interest in the cash Proceeds unless a proportionate amount of the 30% Consulting Fee is also paid to A & A at the same time (i.e. no distribution of the cash Proceeds, whether in the form of Consulting Fee payments to A & A or an equity withdrawal or distribution payments to the members of CoBon, shall be made unless such distributions are made at the same time and on a pro-rata basis).

Except as otherwise provided, within thirty (30) days of CoBon's satisfactory completion of the evaluation and confirmation process, which satisfaction shall not be unreasonably withheld by CoBon, CoBon shall pay the Consulting Fee to A & A, together with A & A's proportionate share (30%) of any interest that shall have accrued thereon during the escrow period. Concurrent with the payment of the Consulting Fee, CoBon shall be entitled to withdraw and/or distribute the remaining portion of the cash Proceeds to its members, together with CoBon's proportionate share (70%) of any interest that shall have accrued thereon during the escrow period.

All non-cash Proceeds received by CoBon shall likewise be held in trust subject to the same conditions and payment terms as applied to cash Proceeds above. To the extent it is deemed commercially necessary, the non-cash Proceeds shall be monetized by CoBon in order to pay A & A and CoBon their respective share thereof. Any dispute as to the value thereof, which cannot be resolved in good faith by the parties, shall be determined in accordance with the arbitration provision hereof.

2.2 Consulting Fee Payment During Remaining Term. During the remaining term of this Agreement that cash proceeds are received for tax credits, and provided satisfactory confirmation has been reasonably obtained during the initial two year period as described above, CoBon shall pay the Consulting Fee to A & A within thirty (30) days of its receipt of the cash proceeds.

2.3 Minimum Reserve. Notwithstanding the provisions of this section, A & A acknowledges that CoBon may during the term of this Agreement maintain, from the cash proceeds received for tax credits, a minimum reserve balance equal to \$200,000. This reserve shall be held for the purpose of assisting in the evaluation and defense of any third-party claim, action, demand, damage or loss threatened or incurred as a result of the parties' performance hereunder. This clause shall not, however, be construed to limit the parties' respective liability to each other hereunder, including paragraph 14.0. Upon expiration of this Agreement, the reserve shall be distributed to the parties (i.e. in the form of a Consulting Fee payment to A & A and a withdrawal or distribution to members to CoBon, together with the proportionate shares of any interest that shall have accrued thereon during the escrow period.

2.4 Acknowledgement of Risk. A & A expressly acknowledges the risks of loss and of nonpayment of the foregoing consideration in the event of an unsuccessful development of briquetting facilities as contemplated by CoBon,

including without limitation, the parties' inability or failure to successfully complete all required activity within the statutory time frame and the possibility of the Internal Revenue Service's non-recognition of any of the participants' tax credit eligibility. A & A shall not be entitled to receive the consideration referenced until and unless all necessary development steps have been completed and tax credit qualification has been confirmed by the Internal Revenue Service as provided herein.

3.0 Coal Technology License. A & A acknowledges that CoBon has obtained from Covol a license to use Covol's proprietary Coal Technology, including the right to purchase and/or manufacture Covol's patented binder, in connection with CoBon's manufacture and sale of coal briquettes and related products, which the parties believe by virtue of the use of the Coal Technology will qualify for I.R.C. Section 29 tax credits. In the event facilities are successfully developed and marketed to a third party purchaser, and subject to the purchaser's payment to CoBon (i) of a Sublicense Royalty Fee to be negotiated by CoBon, and (ii) of a Binder Fee to be imposed by CoBon in an amount not less than the actual cost to obtain the binder, plus twenty percent (20%) per ton of product manufactured, CoBon presently intends to sublicense its right to use the Coal Technology, including Covol's binder, to the third party purchaser for purposes of qualifying all coal briquette production utilizing the Coal Technology for I.R.C. Section 29 tax credits. In the event CoBon successfully negotiates a Sublicense Royalty Fee payment from a prospective purchaser for an amount greater than \$3.00 per ton, CoBon agrees to share any profit derived therefrom with A & A on a 70% / 30% basis. Likewise, in the event CoBon successfully negotiates a Binder Fee payment from a prospective purchaser for an amount greater than CoBon's actual cost, CoBon agrees to share any profit derived therefrom with A & A on a 70% / 30% basis.

Any sublicense of the Coal Technology shall be in strict accordance with the applicable and non-confidential terms and conditions of CoBon's License Agreement with Covol and the purchaser shall agree to be bound by and to perform in strict accordance with all such terms and conditions as if in the place of CoBon. The purchaser shall further agree to indemnify, defend and hold harmless CoBon from and against any claims, demands, damages or actions arising from an alleged or actual breach of such sublicense. A & A will take reasonable steps to insure any potential purchaser is advised of the foregoing

Nothing herein shall be construed as granting A & A any interest in or a right to receive any portion of the Sublicense Royalty Fee or Binder Fee, except

as expressly provided herein.

4.0 Expense Reimbursement. A & A further acknowledges that CoBon has incurred considerable time and expense to date in connection with the development of this project and that CoBon shall receive the sum of \$700,000 to reimburse it for such time and expense relating to the acquisition of the Coal Technology License Agreement and in the development of briquetting facilities. This reimbursement shall be paid to CoBon from the first of any cash proceeds (including proceeds for tax credits generated as a result of CoBon's successful marketing of a site and plant to a third party purchaser) generated after the Sublicense Royalty Fee and any applicable Binder Fee are paid and prior to the calculation and payment of all or any portion of A & A's Consulting Fee (i.e., 30% interest) or any distribution to the members of CoBon of their respective interest in cash proceeds received for tax credits. CoBon shall also be entitled to be reimbursed for actual out-of-pocket costs incurred for product sampling, shipping and testing, which may be conducted by Covol, Combustion Resources or other similarly situated testing facilities. *

Notwithstanding the foregoing right of reimbursement, and subject to the borrower's execution of a suitable corporately guaranteed promissory note and related documentation, CoBon agrees to advance within thirty (30) days following receipt of the cash proceeds (i) to A & A an amount equal to thirty percent (30%) of the estimated net profit received by CoBon for the Sublicense Royalty Fee, Binder Fee and tax credits generated up to a maximum of \$100,000 (i.e. pro-rata distribution of \$50,000 to AGTC and \$50,000 to Alpine) and (ii) to the members of CoBon and amount equal to seventy percent (70%) of the estimated net profit received by CoBon for the Sublicense Royalty Fee, binder Fee and tax credits generated up to a maximum of \$233,334 (i.e. pro-rata distribution based on member equity) during each of the first two years of this Agreement. This advance shall be extended to take in consideration the negative cash flow condition presently anticipated by the parties to exist on the part of A & A during the initial stages of project development.

Nothing herein shall be construed as granting A & A any interest in or a right to receive any portion of the \$700,000 expense reimbursement.

5.0. Term and Termination. The term of this Agreement shall commence on November 1, 1996 and shall, unless earlier terminated upon sixty (60) days advance written notice for legal cause, continue for a term of eleven years or until October 31, 2007 or for so long as a purchaser can qualify for tax

credit eligibility, including any extension hereof under paragraph 6.0. For purposes hereof, legal cause shall be defined as (i) any act or omission on the part of A & A constituting a material breach of the performance of its duties hereunder, which shall remain uncured to the reasonable satisfaction of CoBon for a period of forty five (45) days following receipt of a written request by CoBon that such act or omission be immediately cured; (ii) any intentional misconduct on the part of A & A in the performance of its duties hereunder; or (iii) any criminal conduct on the part of A & A in the performance of its duties hereunder. Nothing herein shall be construed to allow CoBon to terminate this Agreement on the basis of personal conduct not adversely affecting performance of this Agreement.

6.0 Tax Credit Term Extension. Notwithstanding the eleven (11) year term of this Agreement or of any third party purchase or other related agreements which may be negotiated and executed hereafter, the parties agree and acknowledge that such terms shall be automatically extended to coincide with any Congressional extension of the tax credit qualification time period hereinafter enacted.

7.0 Attorneys Fees and Costs. Each party shall be responsible for all attorneys fees, costs or expenses incurred to date in connection with the negotiation and finalization of this letter agreement.

8.0 Governing Law. This agreement shall be governed by the laws of the State of Utah.

9.0 Modification. No modification of this agreement shall be binding upon the parties unless made, in writing, and signed by both parties.

10.0 Authority To Contract. In connection with the execution hereof, the parties agree to and shall provide each other with information regarding their respective ownership, authority to do business and authority to execute this letter agreement. CoBon represents that Covol does not maintain any interest in CoBon.

11.0 Integration. This Agreement constitutes the entire and integrated agreement of the parties and supersedes all prior discussions, representations and agreements between the parties.

12.0 Relationship. Each parties hereto shall be deemed an independent

contractor and nothing herein shall be construed to establish a partnership or joint venture relationship between the parties. Each party has sole responsibility for the payment of each of its employee's wages, payroll taxes and benefits. By virtue hereof, neither party assumes, directly or by implication, the debts, obligations, taxes or liabilities of the other party.

13.0 Arbitration. Any material dispute between the parties arising under this Agreement which is not resolved by good faith negotiation shall be submitted by either party to binding arbitration in Denver, Colorado in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award may be entered in any court with jurisdiction thereof. The costs of arbitration shall be borne by the parties in proportions decided by the arbitrator(s).

14.0 Mutual Indemnification. Each party agrees to and shall indemnify, defend and hold one another, their respective directors, officers, members, and agents, from and against all claims, damages, losses and liabilities of any kind arising from said party's negligent or intentional misconduct or its material breach of the terms or conditions hereof.

15.0 Assignment. Neither party may assign any of its rights or obligations under this Agreement to any other person, firm or corporation without the express written consent of the other party.

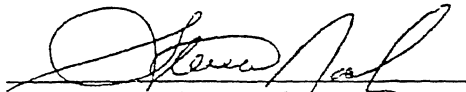
16.0 Equity Interest In CoBon. In the event CoBon hereafter becomes a publicly traded corporation, CoBon agrees to so advise A & A of this fact prior to becoming a publicly traded corporation so as to reasonably allow A & A to convert its right of payment of the consideration referenced in paragraph 2.0 into an equivalent equity interest in such publicly traded corporation. Such interest shall be subject to the parties' compliance with applicable local, state and federal securities and other laws, including the execution of appropriate subscription and other agreements to be prepared by CoBon.

17.0 A & A's Disclosure of Covol Claim/Litigation. CoBon acknowledges A & A has disclosed the existence of a dispute between A & A and Covol which, if pursued, may not be in the best interests of CoBon. Nothing herein shall be construed to limit A & A's ability to zealously pursue the existing claim it has asserted against Covol, including appropriate filings in any state or federal forum with jurisdiction, as a result of that certain letter agreement with Covol dated March 3, 1996.


18.0 Access To Records. CoBon agrees to furnish A & A true and correct copies of any agreement(s) finally negotiated and executed between CoBon and third parties pertaining to A & A's responsibilities, performance and compensation hereunder. A & A agrees to treat such agreement(s) as confidential and proprietary and shall not disclose the existence, nature or terms thereof to third parties without the prior written consent of CoBon.

Dated this 5 day of December, 1996.

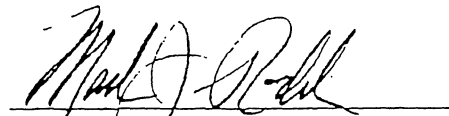
CoBon Energy, L.L.C.


By: Steven R. Nash
Its: Manager and President

AGTC, Inc.


By: Richard G. Visovsky
Its: President

Alpine Coal Co., Inc.


By: Mark J. Rodak
Its: President

Tab D

Robena, L.L.C.

*1145 East South Union Avenue
Suite 100
Midvale, UT. 84047
Telephone: (801) 255-5545
Fax: (801) 255-5661*

July 1, 1998

Mr. Mark Rodak
Mr. Rick Visovsky
Viron Energy
3920 Market Street
Camp Hill, PA 17011

Re: Consulting Agreement


Dear Mark and Rick:

This letter is a follow up to various prior communications with Viron Energy, L.L.C. ("Viron") and specifically to confirm and establish a consulting agreement between Viron and Robena, L.L.C. ("Robena").

Robena hereby retains Viron's reasonable and necessary assistance and consultation in identifying, evaluating, and obtaining raw material resources suitable for the Project and to be used during the time period prior to wash plant construction and operation, including without limitation, processed or other coal fines. Viron will be paid a consulting fee for its assistance in identifying, evaluating, and obtaining such raw material resources to be purchased by Robena or its assigns. Robena will pay Viron a consulting fee in the amount of \$3,750 per week commencing retroactively to May 1, 1998. Viron will be responsible for all out-of-pocket and other expenses and any overhead incurred by Viron incident to Viron's performance of the foregoing services. The consulting agreement will be terminable for cause by Robena upon thirty days written notice.

Should you have any questions concerning this matter, or if I have misstated the terms of our agreement, please do not hesitate to call.

Cordially,


Steven Nash
General Partner

Tab E

FILED IN
4TH DISTRICT COURT
STATE OF UTAH
UTAH COUNTY

19 FEB 22 P 3:54

MBL

BERMAN & SAVAGE, P.C.
E. Scott Savage (2865)
Stephen R. Waldron (6810)
Kyle C. Thompson (11242)
170 South Main Street, Suite 500
Salt Lake City, Utah 84101
Telephone: (801) 328-2200
Facsimile: (801) 531-9926
*Attorneys for AGTC, Inc. and
Alpine Coal Co., Inc.*

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR COUNTY OF UTAH, STATE OF UTAH

COBON ENERGY, LLC,

Plaintiff,

vs.

AGTC, INC., ALPINE COAL CO., INC., and
RICHARD G. VISOVSKY and MARK J.
RODAK,

Defendants.

AGTC, INC. and ALPINE COAL CO., INC.,

Counterclaimants,

vs.

COBON ENERGY, LLC; STEVEN ROGER
NASH; ROBERT IKE NASH; CB
VENTURES, LLC; CE VENTURES, LLC;
COBON SYNFUEL #1, L.L.C.; COBON
SYNFUEL #2, L.L.C.; COBON SYNFUEL #3,
L.L.C.; COBON SYNFUEL #4, L.L.C.;
WILLIAM KELLY NASH; and ANTON
TONC.

Counterdefendants.

**ANSWER TO FIRST AMENDED
COMPLAINT
AND FIRST AMENDED
COUNTERCLAIM**

Civil No. 060402937

Judge James R. Taylor

Defendants AGTC, Inc. (“AGTC”), Alpine Coal Co., Inc. (“Alpine”) (collectively “Alpine/AGTC”), Richard G. Visovsky (“Visovsky”), and Mark J. Rodak (“Rodak”) hereby respond to the First Amended Complaint of plaintiff CoBon Energy, LLC (“CoBon”) and answer, counterclaim and otherwise respond as follows:

ANSWER

By way of answer to the First Amended Complaint, defendants hereby admit, deny, and allege as follows:

FIRST DEFENSE

The First Amended Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Answering the allegations contained in the individually-numbered paragraphs of the First Amended Complaint, defendants admit, deny, and allege as follows:

1. Defendants admit the allegations set forth in paragraph 1 of the First Amended Complaint.

2. In response to the allegations set forth in paragraph 2 of the First Amended Complaint, defendants admit that AGTC is a New Jersey corporation with its principal place of business in New Jersey, and that Visovsky is an individual residing in New Jersey. Defendants deny that AGTC or Visovsky conducted business in Utah as meant by any Utah law or regulation requiring the registration of businesses that conduct business in Utah. To the extent that CoBon’s use of “AGTC” to refer to both AGTC and Visovsky is meant to allege AGTC and Visovsky were partners, joint venturers or alter egos of each other, defendants deny the allegation.

3. In response to the allegations set forth in paragraph 3 of the First Amended Complaint, defendants admit that Alpine is a Pennsylvania corporation with its principal place of business in Pennsylvania, and that Rodak is an individual residing in New Jersey. Defendants deny that Alpine or Rodak ever conducted business in Utah as meant by any Utah law or regulation requiring the registration of businesses that conduct business in Utah. To the extent that CoBon's use of "AGTC" to refer to both AGTC and Rodak is meant to allege AGTC and Rodak were joint venturers, partners or alter egos of each other, defendants deny the allegation.

4. Defendants deny the allegations set forth in paragraph 4 of the First Amended Complaint.

5. Paragraph 5 of the First Amended Complaint does not set forth an allegation and, therefore, defendants do not respond to it. To the extent that CoBon's use of "A&A" to refer to all of the defendants is meant as an allegation that all of the defendants were partners or joint venturers, or alter egos of any of the others, defendants deny the allegation.

6. Defendants admit the allegation set forth in paragraph 6 of the First Amended Complaint.

7. In response to the allegations set forth in paragraph 7 of the First Amended Complaint, defendants deny that the consulting agreement that is the subject matter of this action, entered into on December 5, 1996 and made effective November 1, 1996 (the "Consulting Agreement"), was entered into or performed in Utah County. The Consulting Agreement was entered into and partially performed in Salt Lake County, which is where CoBon is located. Nonetheless, defendants admit that the parties have stipulated to venue in this Court.

8. In response to the allegations set forth in paragraph 8 of the First Amended Complaint, defendants admit that Covol Technologies, Inc., now known as Headwaters Incorporated (“Covol”), acquired and/or developed a patented technology that involved using a binder agent to agglomerate coal fines. Defendants deny that the coal product produced at “synthetic” fuel (“synfuel”) facilities that implemented the Covol patented coal agglomeration technology was marketable in the coal industry absent the availability of the tax credits under Section 29 of the United States Internal Revenue Code, 26 U.S.C. § 29 (now 26 U.S.C. § 45K) (“Section 29”). Defendants allege that the Covol patented coal agglomeration technology had commercial value only because it could be used to produce synfuel for purposes of generating Section 29 tax credits.

9. In response to the allegations set forth in paragraph 9 of the First Amended Complaint, defendants admit that CoBon was formed in August 1995, but deny that the original members of CoBon remained as the members of CoBon after January 1996. Defendants allege that CoBon originally was formed as an affiliate of Covol to pursue development of synfuel facilities that would utilize the Covol synfuel technology, and then, in January 1996, became a separate entity from Covol, with its sole reported members being Steven and Robert Nash. Defendants deny the remaining allegations set forth in paragraph 9 of the First Amended Complaint on the basis of lack of knowledge or information sufficient to form a belief as to the truth of the allegations.

10. In response to the allegations set forth in paragraph 10 of the First Amended Complaint, defendants admit that CoBon entered into a License Agreement with Covol on or about September 10, 1996 for the licensing of Covol’s synfuel technology, and allege that the License Agreement speaks for itself. Defendants also admit that, by September 10, 1996, CoBon had

progressed in identifying potential sites and project operators for the development of synfuel facilities, which progression, defendants allege, was the result of the efforts of defendants in presenting potential sites and project hosts to CoBon and assisting CoBon in negotiating required contracts. Defendants allege that CoBon entered into its License Agreement with Covol only as a result of Covol's decision to forego development of several potential synfuel facility projects that Alpine/AGTC had brought to Covol and CoBon.

11. In response to the allegations set forth in paragraph 11 of the First Amended Complaint, defendants admit that, following the execution of its License Agreement with Covol, CoBon pursued participating in projects to develop synfuel facilities that were intended to generate tax credits under Section 29, which facilities were intended to be sold to third parties that could use the substantial Section 29 tax credits that the facilities would generate. Defendants deny the remaining allegations set forth in paragraph 11 of the First Amended Complaint and specifically deny that CoBon engaged in dual business purposes.

12. In response to the allegations set forth in paragraph 12 of the First Amended Complaint, defendants admit that CoBon pursued development of synfuel facilities with the intent of generating substantial proceeds, which primarily would be in the form of proceeds for the Section 29 tax credits made available to the investors/owners of the synfuel facilities that were developed, as well as initial royalty fees and profits from fees received for the sale to those investors/owners of the binder agent used with the Covol synfuel technology to produce synfuel. Defendants allege that, as of September 10, 1996, CoBon understood that a developer of synfuel facilities, such as itself, would be compensated for transferring the ability to generate tax credits to the synfuel facility owner

primarily by receiving proceeds based upon production and sales of synfuel at the facility, by which production and sale Section 29 tax credits would be generated. Defendants allege that, as of September 10, 1996, CoBon understood that the reason a synfuel facility that utilized the Covol synfuel technology had value was because of its ability to generate Section 29 tax credit for its investor/owner, rather than its ability to bind coal fines, and that the value of the hard assets of a synfuel facility were insignificant in comparison to the value of the Section 29 tax credits that a qualified synfuel facility could generate.

13. Answering the allegations set forth in paragraph 13 of the First Amended Complaint, defendants incorporate and reallege their applicable denials, admissions, and responses.

14. Defendants deny the allegations set forth in paragraph 14 of the First Amended Complaint. Defendants allege that they became acquainted with CoBon in 1995, in connection with CoBon's efforts to assist Covol in the development of synfuel facilities. Defendants allege that Visovsky and Rodak represented to Covol in 1995 that they were experienced in and had knowledge of the coal industry and the marketing of coal products. Defendants allege that Visovsky and Rodak did not have any experience in the development of coal briquette marketing facilities in 1995, and, at that time, did not and could not represent to Covol or CoBon that they had any such experience, as there had been only isolated coal briquette manufacturing efforts in the United States before that time. Defendants allege that CoBon knew Visovsky and Rodak had experience in the coal industry and the marketing of coal products as of September 10, 1996, when CoBon itself obtained a license to pursue development of synfuel facilities that would utilize the Covol patented coal agglomeration technology and was working with Alpine/AGTC towards such development. Defendants also allege

that, as of September 10, 1996, Visovsky's and Rodak's experience in developing synfuel facilities, as was known by CoBon, was limited to their work between March and July 1996 in assisting Covol in its attempts to develop synfuel facilities and their work after July 1996 in assisting CoBon in its attempt to develop the synfuel facility projects that Alpine/AGTC had presented to Covol but which Covol had decided not to pursue. Defendants specifically deny that they represented to CoBon that they were licensed in any manner or that any licensing on their part was required by the Consulting Agreement or for Alpine/AGTC to be able to perform under the Consulting Agreement.

15. Defendants deny the allegations set forth in paragraph 15 of the First Amended Complaint. Defendants deny making any representations other than those made in the subject Consulting Agreement, which speaks for itself. Defendants also deny making any representations regarding engineering consulting, and deny that such consulting was the subject of the Consulting Agreement. Defendants allege that, by the time the Consulting Agreement was negotiated and entered into, CoBon had been working with defendants in connection with assisting Covol in its development of synfuel facilities since at least March 1996, and knew that defendants had contacts in the coal industry and had the ability to find locations and project hosts for potential synfuel facility projects, which is why CoBon sought to retain Alpine and AGTC under the Consulting Agreement.

16. In response to the allegations set forth in paragraph 16 of the First Amended Complaint, defendants admit that CoBon did not have adequate knowledge, experience, contacts, or abilities to be able to find suitable sites, project hosts, suppliers, and customers for synfuel facility projects and that CoBon needed and desired Alpine's and AGTC's assistance in order to timely develop any synfuel facilities and, thus, make possible CoBon's development of synfuel facilities.

Defendants deny the remaining allegations set forth in paragraph 16 of the First Amended Complaint. Defendants specifically deny that CoBon lacked or needed from Alpine/AGTC, Visovsky or Rodak any "licenses" in order to participate in the development of synfuel facilities as intended under the Consulting Agreement. Defendants allege that, by the time the parties negotiated and entered into the Consulting Agreement, CoBon had knowledge of and had benefitted from defendants' experience and knowledge in the coal industry, which is why CoBon sought to retain Alpine/AGTC under the Consulting Agreement.

17. In response to the allegations set forth in paragraph 17 of the First Amended Complaint, defendants admit that Alpine/AGTC entered into the Consulting Agreement with CoBon, which Consulting Agreement was made effective November 1, 1996, and that a copy of the Consulting Agreement is attached as Exhibit A to the original Complaint. Defendants also admit that the Consulting Agreement was the subject of negotiations between the parties. As to the allegations regarding the purpose of the Consulting Agreement set forth in paragraph 17 of the First Amended Complaint, defendants allege that the Consulting Agreement speaks for itself. Defendants deny the allegation that Visovsky or Rodak were parties to the Consulting Agreement. Defendants allege that only CoBon, Alpine, and AGTC were parties to the Consulting Agreement and that Visovsky and Rodak signed the Consulting Agreement only in their respective capacities as representatives of AGTC and Alpine.

18. In response to paragraph 18 of the First Amended Complaint, defendants deny CoBon's characterization of the terms of the Consulting Agreement and allege that the Consulting Agreement speaks for itself. Defendants deny that Visovsky or Rodak were parties to the Consulting

Agreement.

19. In response to paragraph 19 of the First Amended Complaint, defendants deny CoBon's characterization of the terms of the Consulting Agreement and allege that the Consulting Agreement speaks for itself. Defendants deny that the parties intended that under the Consulting Agreement only synfuel projects as to which CoBon itself undertook all necessary development steps fell under the Consulting Agreement. Defendants also deny that the parties intended that under the Consulting Agreement that Alpine/AGTC could perform their scope of work under the Consulting Agreement only as to synfuel projects as to which CoBon itself undertook all necessary development steps. Defendants deny that Visovsky or Rodak were parties to the Consulting Agreement.

20. In response to paragraph 20 of the First Amended Complaint, defendants deny CoBon's characterization of the terms of the Consulting Agreement and allege that the Consulting Agreement speaks for itself. Defendants deny that Visovsky or Rodak were parties to the Consulting Agreement.

21. In response to paragraph 21 of the First Amended Complaint, defendants deny CoBon's characterization of the terms of the Consulting Agreement and allege that the Consulting Agreement speaks for itself. Defendants deny that Visovsky or Rodak were parties to the Consulting Agreement.

22. In response to paragraph 22 of the First Amended Complaint, defendants deny CoBon's characterization of the terms of the Consulting Agreement and allege that the Consulting Agreement speaks for itself. Defendants deny that Visovsky or Rodak were parties to the Consulting Agreement.

23. In response to paragraph 23 of the First Amended Complaint, defendants deny CoBon's characterization of the terms of the Consulting Agreement and allege that the Consulting Agreement speaks for itself. Defendants deny that the parties intended with the Consulting Agreement that Alpine/AGTC were to be CoBon's only consultants. Defendants deny that Visovsky or Rodak were parties to the Consulting Agreement.

24. In response to paragraph 24 of the First Amended Complaint, defendants deny CoBon's characterization of the terms of the Consulting Agreement and allege that the Consulting Agreement speaks for itself. Defendants deny that Visovsky or Rodak were parties to the Consulting Agreement.

25. In response to paragraph 25 of the First Amended Complaint, defendants deny CoBon's characterization of the terms of the Consulting Agreement and allege that the Consulting Agreement speaks for itself. Defendants deny that Visovsky or Rodak were parties to the Consulting Agreement.

26. In response to paragraph 26 of the First Amended Complaint, defendants deny CoBon's characterization of the terms of the Consulting Agreement and allege that the Consulting Agreement speaks for itself. Defendants deny that Visovsky or Rodak were parties to the Consulting Agreement.

27. In response to paragraph 27 of the First Amended Complaint, defendants deny CoBon's characterization of the terms of the Consulting Agreement and allege that the Consulting Agreement speaks for itself. Defendants deny that Visovsky or Rodak were parties to the Consulting Agreement.

28. In response to paragraph 28 of the First Amended Complaint, defendants deny CoBon's characterization of the terms of the Consulting Agreement and allege that the Consulting Agreement speaks for itself. Defendants deny that Visovsky or Rodak were parties to the Consulting Agreement.

29. In response to the allegations set forth in paragraph 29 of the First Amended Complaint, defendants admit that CoBon spent considerable time and effort in developing synfuel facilities after entering into the Consulting Agreement. Defendants allege that CoBon's efforts were with Alpine/AGTC's considerable assistance, in full performance of the Consulting Agreement, and were successful as synfuel facilities were developed that have generated Section 29 tax credits for their respective investors/owners and, thus, from which CoBon has received considerable proceeds. Defendants deny the remaining allegations of paragraph 29 of the First Amended Complaint, and deny that Visovsky or Rodak were parties to the Consulting Agreement.

30. Defendants deny the allegations set forth in paragraph 30 of the First Amended Complaint. Defendants allege that CoBon has failed to pay Alpine/AGTC the considerations due to them under the Consulting Agreement, as set forth in the First Amended Counterclaim below.

31. Defendants deny the allegations set forth in paragraph 31 of the First Amended Complaint. Defendants deny that Visovsky or Rodak were parties to the Consulting Agreement.

32. Defendants deny the allegations set forth in paragraph 32 of the First Amended Complaint. Defendants deny that Visovsky or Rodak were parties to the Consulting Agreement.

33. In response to the allegations set forth in paragraph 33 of the First Amended Complaint, defendants admit that neither Rodak nor Visovsky were licensed mining engineers, but

deny that such licensing was required by the Consulting Agreement or necessary to Alpine/AGTC's performance of the Consulting Agreement. Defendants specifically deny that any lack of licensing as mining engineers constituted a breach of the Consulting Agreement. Defendants also deny that Visovsky or Rodak were parties to the Consulting Agreement.

34. Defendants deny the allegations set forth in paragraph 34 of the First Amended Complaint. Defendants specifically deny that Alpine or AGTC breached the Consulting Agreement, specifically deny that Visovsky or Rodak were parties to the Consulting Agreement, and specifically deny that synfuel facilities were not developed as contemplated by the Consulting Agreement.

35. Defendants deny the allegations set forth in paragraph 35 of the First Amended Complaint. Defendants specifically deny taking or receiving any payments in violation of any duty to CoBon under the Consulting Agreement and deny that Visovsky or Rodak were parties to the Consulting Agreement.

36. Defendants deny the allegations set forth in paragraph 36 of the First Amended Complaint. Defendants specifically deny that Alpine/AGTC breached the Consulting Agreement, that Visovsky or Rodak were parties to the Consulting Agreement, or that CoBon suffered any damage as the result of any alleged breach of the Consulting Agreement.

37. Answering the allegations set forth in paragraph 37 of the First Amended Complaint, defendants incorporate and reallege their applicable denials, admissions, and responses.

38. Defendants deny the allegations set forth in paragraph 38 of the First Amended Complaint. Defendants allege that the Consulting Agreement provided and stated the only legal relationship between defendants and CoBon, that Alpine/AGTC were expressly identified as

independent contractors under the Consulting Agreement, and that Visovsky and Rodak were not parties to the Consulting Agreement.

39. In response to the allegations set forth in paragraph 39 of the First Amended Complaint, defendants deny that CoBon placed trust and confidence in defendants as required for the formation of a fiduciary relationship. Defendants allege that the Consulting Agreement provided and stated the only legal relationship between defendants and CoBon, that Alpine/AGTC were expressly identified as independent contractors under the Consulting Agreement, and that Visovsky and Rodak were not parties to the Consulting Agreement.

40. Defendants deny the allegations set forth in paragraph 40 of the First Amended Complaint and specifically deny ever owing CoBon any fiduciary duties. Defendants allege that the Consulting Agreement provided and stated the only legal relationship between defendants and CoBon, that Alpine/AGTC were expressly identified as independent contractors under the Consulting Agreement, and that Visovsky and Rodak were not parties to the Consulting Agreement.

41. Defendants deny the allegations set forth in paragraph 41 of the First Amended Complaint and specifically deny ever owing CoBon any fiduciary duties or that defendants breached any fiduciary duty owing to CoBon. Defendants allege that the Consulting Agreement provided and stated the only legal relationship between defendants and CoBon, that Alpine/AGTC were expressly identified as independent contractors under the Consulting Agreement, and that Visovsky and Rodak were not parties to the Consulting Agreement.

42. Defendants deny the allegations set forth in paragraph 42 of the First Amended Complaint. Defendants specifically deny that they ever owed any fiduciary duties to CoBon.

Defendants specifically deny that defendants breached any fiduciary duty owed to CoBon. Defendants allege that the Consulting Agreement provided and stated the only legal relationship between defendants and CoBon, that Alpine/AGTC were expressly identified as independent contractors under the Consulting Agreement, and that Visovsky and Rodak were not parties to the Consulting Agreement.

43. Defendants deny the allegations set forth in paragraph 43 of the First Amended Complaint. Defendants specifically deny that they ever owed any fiduciary duties to CoBon. Defendants specifically deny that defendants breached any fiduciary duty owed to CoBon. Defendants allege that the Consulting Agreement provided and stated the only legal relationship between defendants and CoBon, that Alpine/AGTC were expressly identified as independent contractors under the Consulting Agreement, and that Visovsky and Rodak were not parties to the Consulting Agreement.

44. Defendants deny the allegations set forth in paragraph 44 of the First Amended Complaint. Defendants specifically deny that they ever owed any fiduciary duties to CoBon. Defendants specifically deny that defendants breached any fiduciary duty owed to Cobon. Defendants allege that the Consulting Agreement provided and stated the only legal relationship between defendants and CoBon, that Alpine/AGTC were expressly identified as independent contractors under the Consulting Agreement, and that Visovsky and Rodak were not parties to the Consulting Agreement.

45. Defendants deny the allegations set forth in paragraph 45 of the First Amended Complaint. Defendants specifically deny that they ever owed any fiduciary duties to CoBon, and that

CoBon ever suffered any damages as a result of any alleged breach by defendants of any alleged fiduciary duties owed to CoBon.

46. Answering the allegations set forth in paragraph 46 of the First Amended Complaint, defendants incorporate and reallege their applicable denials, admissions, and responses.

47. In response to the allegations set forth in paragraph 47 of the First Amended Complaint, defendants admit that CoBon made the referenced payments, totaling \$503,000, to Alpine/AGTC, and that the referenced payments were made according to the schedule set forth in paragraph 47 of the First Amended Complaint, but deny that any of the referenced payments were conditionally made, deny that any of the referenced payments were loans, expense reimbursements within the scope of the Consulting Agreement, or consulting fee advances or payments under the Consulting Agreement that were never earned, and deny that any payments were made to Visovsky or Rodak in their individual capacities.

48. In response to the allegations set forth in paragraph 48 of the First Amended Complaint, defendants admit that Alpine/AGTC, as Viron Energy, were paid \$15,000 per month from May 1998 until August 1999, but deny that those payments were made by CoBon or were made under the Consulting Agreement, or were for compensation for services provided under the Consulting Agreement. Defendants deny that any of the \$15,000 per month payments were to either Visovsky or Rodak in their individual capacities. Defendants allege that the \$15,000 per month payments were made by Robena, LLC under a July 1, 1998 written contract by which Robena LLC retained Alpine/AGTC, using the name "Viron Energy," to provide services in connection with the operation of one of the synfuel facilities that was developed under the Consulting Agreement.

Defendants allege that, as expressly stated in the Consulting Agreement, Alpine/AGTC were not obligated to provide management services under the Consulting Agreement.

49. Defendants deny the allegations set forth in paragraph 49 of the First Amended Complaint, except as to admit that the referenced payments made under the Consulting Agreement before September 9, 2001 were made in advance of CoBon's receipt of "Proceeds" under the Consulting Agreement. Defendants specifically deny that Alpine and AGTC failed to earn any consulting fee advance or payment, specifically deny that Visovsky or Rodak were parties to the Consulting Agreement or that any payments were made to Visovsky or Rodak in their individual capacities, specifically deny the non-occurrence or non-satisfaction of any condition precedent to CoBon's obligation to pay the contract price, including consulting fees, under the Consulting Agreement, specifically deny that the referenced payments were conditionally issued or subject to repayment or an accounting, and specifically deny that any of the referenced payments were loans or expense reimbursements within the scope of the Consulting Agreement.

50. Defendants deny the allegations set forth in paragraph 50 of the First Amended Complaint. Defendants specifically deny that Alpine and AGTC failed to earn any consulting fee advance or payment, specifically deny the non-occurrence or non-satisfaction of any condition precedent to CoBon's obligation to pay consulting fees under the Consulting Agreement, specifically deny that Visovsky or Rodak were parties to the Consulting Agreement or that any payments were made to Visovsky or Rodak in their individual capacities, specifically deny that the referenced payments were conditionally issued or subject to repayment or an accounting, and specifically deny

that any of the referenced payments were loans or expense reimbursements within the scope of the Consulting Agreement.

51. Defendants deny the allegations set forth in paragraph 51 of the First Amended Complaint. Defendants specifically deny that any of the referenced payments were loans or expense reimbursements within the scope of the Consulting Agreement, specifically deny that CoBon is entitled to any accounting with respect to any of the referenced payments, and specifically deny that any payments were made to Visovsky or Rodak in their individual capacities.

52. Defendants deny the allegations set forth in paragraph 52 of the First Amended Complaint. Defendants specifically deny that defendants coerced CoBon to make any of the referenced payments, specifically deny that any of the referenced payments were made under duress, specifically deny that the any of the referenced payments were conditional or subject to repayment, and specifically deny that any of the referenced payments were made to Visovsky or Rodak in their individual capacities.

53. Defendants deny the allegations set forth in paragraph 53 of the First Amended Complaint. Defendants specifically deny that Alpine/AGTC failed to earn any consulting fee advance or payment, specifically deny the non-occurrence or non-satisfaction of any condition precedent to CoBon's obligation to pay consulting fees under the Consulting Agreement, specifically deny that Visovsky or Rodak were parties to the Consulting Agreement, or received any of the referenced payments in their individual capacities, specifically deny that any of the referenced payments were conditionally issued or subject to repayment or an accounting, specifically deny that

any of the referenced payments were loans or expense reimbursements within the scope of the Consulting Agreement, and specifically deny that CoBon is entitled to interest as to any sums.

54. Defendants deny the allegations set forth in paragraph 54 of the First Amended Complaint.

55. Answering the allegations set forth in paragraph 55 of the First Amended Complaint, defendants incorporate and reallege their applicable denials, admissions, and responses.

56. Defendants deny the allegations set forth in paragraph 56 of the First Amended Complaint. Defendants specifically deny being unjustly enriched, specifically deny being conferred by CoBon any benefit to which defendants were not entitled, specifically deny that CoBon ever made any payments to defendants that were loans, specifically deny that CoBon ever made any expense reimbursements that were not agreed to by CoBon and earned, specifically deny that Alpine/AGTC failed to earn any consulting fee advance or payment, and specifically deny that any payments were made to Visovsky or Rodak in their individual capacities.

57. Defendants deny the allegations set forth in paragraph 57 of the First Amended Complaint. Defendants specifically deny that Alpine/AGTC failed to earn any consulting fee advance or payment, specifically deny that Visovsky or Rodak were parties to the Consulting Agreement or received any payments from CoBon in their individual capacities, specifically deny the non-occurrence or non-satisfaction of any condition precedent to CoBon's obligation to pay consulting fees under the Consulting Agreement, specifically deny CoBon making any payments to defendants that were conditionally issued or subject to repayment or an accounting, specifically deny being unjustly enriched, specifically deny being conferred by CoBon any benefit to which defendants

were not entitled, specifically deny that CoBon ever made any payments to defendants that were loans, and specifically deny that CoBon ever made any expense reimbursements that were not agreed to by CoBon and earned.

58. Defendants deny the allegations set forth in paragraph 58 of the First Amended Complaint.

59. Answering the allegations set forth in paragraph 59 of the First Amended Complaint, defendants incorporate and reallege their applicable denials, admissions, and responses.

60. Defendants deny the allegations set forth in paragraph 60 of the First Amended Complaint. Defendants specifically deny depriving CoBon of its use and possession of any monies, specifically deny converting any property of CoBon, specifically deny that Alpine/AGTC failed to earn any consulting fee advance or payment, specifically deny the non-occurrence or non-satisfaction of any condition precedent to CoBon's obligation to pay consulting fees under the Consulting Agreement, specifically deny that the referenced payments were conditionally issued or subject to repayment, specifically deny that CoBon ever made any payments to defendants that were loans, specifically deny that CoBon ever made any expense reimbursements that were not agreed to by CoBon or earned by Alpine/AGTC, and specifically deny that Visovsky or Rodak were parties to the Consulting Agreement or received any payments from CoBon in their individual capacities.

61. Defendants deny the allegations set forth in paragraph 61 of the First Amended Complaint. Defendants specifically deny taking any monies, assets or opportunities that belonged to CoBon.

62. Defendants deny the allegations set forth in paragraph 62 of the First Amended

Complaint.

63. Defendants deny the allegations set forth in paragraph 63 of the First Amended Complaint.

64. Answering the allegations set forth in paragraph 64 of the First Amended Complaint, defendants incorporate and reallege their applicable denials, admissions, and responses.

65. Defendants deny the allegations set forth in paragraph 65 of the First Amended Complaint. Defendants specifically deny depriving CoBon of any of its property, including its cash, and specifically deny interfering with any economic relation, interests or opportunities of CoBon.

66. Defendants deny the allegations set forth in paragraph 66 of the First Amended Complaint.

67. Defendants deny the allegations set forth in paragraph 67 of the First Amended Complaint.

68. Answering the allegations set forth in paragraph 68 of the First Amended Complaint, defendants incorporate and reallege their applicable denials, admissions, and responses.

69. Defendants deny the allegations set forth in paragraph 69 of the First Amended Complaint. Defendants specifically deny any grounds for estoppel as to them, specifically deny their retention of any unearned sums, specifically deny that CoBon ever made any payment to defendants of unearned fees, advances, or loans, specifically deny that CoBon is entitled to the repayment of any sums, and specifically deny that Visovsky or Rodak were parties to the Consulting Agreement or received any payments from CoBon in their individual capacities.

70. Defendants deny the allegations set forth in paragraph 70 of the First Amended

Complaint.

78. Answering the allegations set forth in paragraph 78 of the First Amended Complaint, defendants incorporate and reallege their applicable denials, admissions, and responses.

79. In response to the allegation set forth in paragraph 79 of the First Amended Complaint, defendants admit that Alpine/AGTC have made a demand for payment of the consideration that is due and owing, and will be due and owing under the Consulting Agreement. Defendants deny that Visovsky or Rodak, in their individual capacities, have made such a demand or that Visovsky or Rodak were parties to the Consulting Agreement.

80. Defendants deny the allegations set forth in paragraph 80 of the First Amended Complaint. Defendants deny that Visovsky or Rodak were parties to the Consulting Agreement.

81. In response to the allegations set forth in paragraph 81 of the First Amended Complaint, defendants admit that there is a dispute between Alpine/AGTC, on the one hand, and CoBon on the other hand with respect to Alpine/AGTC's entitlement under the Consulting Agreement to be paid the consideration specified therein for them, and that there has been no resolution to this dispute. Defendants deny that any condition precedent to CoBon's obligation to pay Alpine/AGTC their consideration under the Consulting Agreement was unsatisfied, and deny that all of what CoBon apparently alleges were conditions precedent to that obligation are, in fact, conditions precedent to that obligation. Defendants deny that they contend that Visovsky or Rodak, in their individual capacities, were parties to the Consulting Agreement or are entitled to be paid under the Consulting Agreement.

82. In response to the allegation set forth in paragraph 82 of the First Amended

Complaint, defendants deny that CoBon is entitled to the relief requested in that paragraph, although defendants admit that CoBon seeks the requested relief. Defendant specifically deny that Alpine/AGTC materially or otherwise breached the Consulting Agreement, specifically deny that Visovsky or Rodak were parties to the Consulting Agreement, and specifically deny that defendants owed or breached any fiduciary duties to CoBon, received any unearned payments from CoBon, owed any duty to indemnify CoBon, or engaged in or committed any intentional or negligent misconduct. Alpine/AGTC allege, as set forth in the First Amended Counterclaim below, that Alpine/AGTC are entitled to be paid the consideration provided to them under the Consulting Agreement.

83. In response to the allegation set forth in paragraph 83 of the First Amended Complaint, defendants deny that CoBon is entitled to the relief requested in that paragraph, although defendants admit that CoBon seeks the requested relief. Defendants specifically deny that the project development contemplated in the Consulting Agreement was unsuccessful, specifically deny that Visovsky or Rodak were parties to the Consulting Agreement, specifically deny that any conditions precedent to CoBon's obligation to pay consulting fees provided for under the Consulting Agreement have not been satisfied, specifically deny that Alpine/AGTC failed or refused to perform or satisfactorily perform the consulting services that they were to provide under the Consulting Agreement, and specifically deny that Alpine/AGTC materially or otherwise breached the Consulting Agreement or otherwise are not entitled to payment of the consideration provided to them under the Consulting Agreement. Alpine/AGTC allege, as set forth in the First Amended Counterclaim below,

that Alpine/AGTC are entitled to be paid the consideration provided to them under the Consulting Agreement.

84. Answering the allegations set forth in paragraph 84 of the First Amended Complaint, defendants incorporate and reallege their applicable denials, admissions, and responses.

85. In response to the allegations set forth in paragraph 85 of the First Amended Complaint, defendants incorporate and reallege their applicable denials and responses to paragraphs 14 and 15 of the First Amended Complaint, and otherwise deny the allegations set forth in paragraph 85 of the First Amended Complaint, and specifically deny making any representations other than those made in the subject Consulting Agreement, which speaks for itself.

86. In response to the allegations set forth in paragraph 86 of the First Amended Complaint, defendants incorporate and reallege their applicable denials and responses to paragraphs 14 and 15 of the First Amended Complaint, and otherwise deny the allegations set forth in paragraph 86 of the First Amended Complaint, and specifically deny making any representations other than those made in the subject Consulting Agreement, which speaks for itself.

87. Defendants deny the allegations set forth in paragraph 87 of the First Amended Complaint.

88. Defendants deny the allegations set forth in paragraph 88 of the First Amended Complaint.

89. Defendants deny the allegations set forth in paragraph 89 of the First Amended Complaint.

90. Answering the allegations set forth in paragraph 90 of the First Amended Complaint, defendants incorporate and reallege their applicable denials, admissions, and responses.

91. Defendants deny the allegations set forth in paragraph 91 of the First Amended Complaint. Defendants specifically deny any obligation to disclose that they were not licensed professional engineers. Defendants also deny that Alpine/AGTC were not qualified to perform Alpine/AGTC's services under the Consulting Agreement. Defendants also specifically deny that Rodak or Visovsky being licensed professional engineers was a requirement of the Consulting Agreement or necessary to Alpine/AGTC's performance under the Consulting Agreement. Defendants also specifically deny that CoBon lacked knowledge as to the fact that Visovsky and Rodak were not licensed professional engineers. Defendants allege that neither Rodak nor Visovsky held themselves out as professional engineers and, thus, did not have to be licensed and allege that CoBon had full knowledge of the extent of defendants' experience, knowledge and contacts, and the fact that Rodak and Visovsky were not licensed professional engineers, at the time CoBon entered into the Consulting Agreement.

92. Defendants deny the allegations set forth in paragraph 92 of the First Amended Complaint. Defendants specifically deny any obligation to disclose that they were not licensed professional engineers. Defendants also specifically deny that Alpine/AGTC were not qualified to perform Alpine/AGTC's services under the Consulting Agreement. Defendants also specifically deny that Rodak or Visovsky being licensed professional engineers was a requirement of the Consulting Agreement or necessary to Alpine/AGTC's performance under the Consulting Agreement. Defendants also specifically deny that CoBon lacked knowledge as to the fact that

Visovsky and Rodak were not licensed professional engineers. Defendants allege that neither Rodak nor Visovsky held themselves out as professional engineers and, thus, did not have to be licensed and allege that CoBon had full knowledge of the extent of defendants' experience, knowledge and contacts, and the fact that Rodak and Visovsky were not licensed professional engineers, at the time CoBon entered into the Consulting Agreement.

93. Defendants deny the allegations set forth in paragraph 93 of the First Amended Complaint.

94. Defendants deny the allegations set forth in paragraph 94 of the First Amended Complaint.

95. Answering the allegations set forth in paragraph 95 of the First Amended Complaint, defendants incorporate and reallege their applicable denials, admissions, and responses.

96. In response to the allegations set forth in paragraph 96 of the First Amended Complaint, defendants admit that neither Rodak nor Visovsky were licensed professional engineers. Defendants deny the remaining allegations set forth in paragraph 96 of the First Amended Complaint. Defendants specifically deny that Rodak or Visovsky held themselves out as professional engineers such that they had to be licensed under the cited statutes, and specifically deny that Alpine/AGTC, as business entities, could be licensed under the cited statutes. Defendants also specifically deny that Rodak or Visovsky had to be licensed professional engineers in order for Alpine/AGTC to be able to perform under the Consulting Agreement and that CoBon had any expectation that Rodak or Visovsky were or had to license professional engineers under the Consulting Agreement. Defendants also specifically deny that the cited statutes give rise to a claim

for relief on behalf of CoBon.

97. Defendants deny the allegations set forth in paragraph 97 of the First Amended Complaint.

98. Defendants deny the allegations set forth in paragraph 98 of the First Amended Complaint and specifically deny that CoBon is entitled to the requested relief.

99. Defendants deny the allegations set forth in paragraph 99 of the First Amended Complaint, and specifically deny that CoBon is entitled to the requested relief under the cited statutes.

100. Answering the allegations set forth in paragraph 100 of the First Amended Complaint, defendants incorporate and reallege their applicable denials, admissions, and responses.

101. In response to the allegations set forth in paragraph 101 of the First Amended Complaint, defendants admit that Alpine/AGTC were paid the \$503,000 in total payments, referenced as the “Advance Payments,” under the Consulting Agreement. Defendants deny the remaining allegations set forth in paragraph 101 of the First Amended Complaint.

102. Defendants deny the allegations set forth in paragraph 102 of the First Amended Complaint.

103. Defendants deny the allegations set forth in paragraph 103 of the First Amended Complaint.

104. Defendants deny the allegations set forth in paragraph 104 of the First Amended Complaint and specifically deny that CoBon is entitled to the requested relief.

105. Answering the allegations set forth in paragraph 105 of the First Amended Complaint, defendants incorporate and reallege their applicable denials, admissions, and responses.

106. Defendants deny the allegations set forth in paragraph 106 of the First Amended Complaint.

107. Defendants deny the allegations set forth in paragraph 107 of the First Amended Complaint.

108. Defendants deny the allegations set forth in paragraph 108 of the First Amended Complaint.

109. Defendants deny the allegations set forth in paragraph 109 of the First Amended Complaint.

110. Defendants deny the allegations set forth in paragraph 110 of the First Amended Complaint, and specifically deny that CoBon is entitled to the requested relief.

111. Answering the allegations set forth in paragraph 111 of the First Amended Complaint, defendants incorporate and reallege their applicable denials, admissions, and responses.

112. Defendants deny the allegations set forth in paragraph 112 of the First Amended Complaint.

113. Defendants deny the allegations set forth in paragraph 113 of the First Amended Complaint.

114. Defendants deny the allegations set forth in paragraph 114 of the First Amended Complaint.

115. Defendants deny the allegations set forth in paragraph 115 of the First Amended Complaint, and specifically deny that CoBon is entitled to the requested relief.

116. Answering the allegations set forth in paragraph 116 of the First Amended Complaint, defendants incorporate and reallege their applicable denials, admissions, and responses.

117. In response to the allegations set forth in paragraph 117 of the First Amended Complaint, defendants admit that on or about November 24, 1999, Alpine/AGTC, using the name Viron Energy, filed a civil action entitled Viron Energy v. Robena, LLC, No. CV:7141-1999, in the Court of Common Pleas of Cumberland County, Pennsylvania (the “Civil Action”). Defendants also admit that at the time this Civil Action was filed, CoBon, through CoBon Synfuel #2, LLC, was the general partner of Robena LLP, the owner of Robena, LLC. Defendants deny the remaining allegations set forth in paragraph 117, and specifically deny that CoBon, Rodak or Visovsky were parties to the Civil Action and that CoBon was the managing agent of Robena LLC at the time the Civil Action was filed.

118. In response to the allegations set forth in paragraph 118 of the First Amended Complaint, defendants admit that Alpine/AGTC, using the name “Viron Energy,” and Robena, LLC entered into a “Settlement and Release Agreement” in connection with the Civil Action, and allege that the “Settlement and Release Agreement” speaks for itself. Defendants deny that the “Settlement and Release Agreement” provided for a release by Alpine/AGTC of any claim under the Consulting Agreement, and that CoBon was a party to the “Settlement and Release Agreement.”

119. Defendants deny the allegations set forth in paragraph 119 of the First Amended Complaint. Defendants specifically deny that the “Settlement and Release Agreement” provided for

a release by Alpine/AGTC of any claim under the Consulting Agreement, and that CoBon, Visovsky or Rodak were parties to the “Settlement and Release Agreement.” Defendants also specifically deny that Rodak and Visovsky assert any claims for relief in this action.

120. Defendants deny the allegations set forth in paragraph 120 of the First Amended Complaint, and specifically deny that CoBon is entitled to the requested relief.

121. Defendants deny the allegations set forth in paragraph 121 of the First Amended Complaint. Defendants specifically deny that Alpine/AGTC breached the “Settlement and Release Agreement” and that CoBon, Visovsky or Rodak were parties to that agreement. Defendants also specifically deny that the “Settlement and Release Agreement” provided for a release by Alpine/AGTC of any claim under the Consulting Agreement.

THIRD DEFENSE

The First Amended Complaint is barred by reason of waiver and estoppel.

FOURTH DEFENSE

The First Amended Complaint is barred by reason of CoBon’s failure to act in good faith.

FIFTH DEFENSE

The First Amended Complaint is barred by reason of CoBon’s partial performance of the Consulting Agreement.

SIXTH DEFENSE

The First Amended Complaint is barred by reason of breach of contract.

SEVENTH DEFENSE

The First Amended Complaint is barred by reason of the matters alleged in the First Amended Counterclaim which follows.

EIGHTH DEFENSE

The Second, Third, Fourth, Fifth, Sixth, and Seventh Claims for Relief are barred by reason of the Consulting Agreement, which established, constituted and stated the terms of the only legal relationship between Alpine and AGTC on the one hand, and CoBon on the other hand.

NINTH DEFENSE

The First Amended Complaint is barred against Visovsky and Rodak by reason of Visovsky and Rodak not being parties to the Consulting Agreement.

WHEREFORE, defendants pray judgment:

1. For dismissal of the First Amended Complaint on the merits and with prejudice, no cause of action;
2. For the relief sought in AGTC's and Alpine's Counterclaim;
3. For attorneys' fees;
4. For costs; and
5. For all and such further relief to which defendants may prove to be entitled and/or the Court deems just and proper.

FIRST AMENDED COUNTERCLAIM

Alpine and AGTC ("Alpine/AGTC") hereby counterclaim against plaintiff/counterdefendant CoBon Energy, LLC ("CoBon") and counterdefendants Steven Roger Nash ("Steven Nash"); Robert

Ike Nash ("Robert Nash"); CB Ventures, LLC ("CB Ventures"); CE Ventures, LLC ("CE Ventures"); CoBon Synfuel #1, LLC; CoBon Synfuel #2, LLC; CoBon Synfuel #3, LLC ; CoBon Synfuel #4, LLC; William Kelly Nash ("W. Kelly Nash"); and Anton Tonc, and, for cause of action, allege as follows:

NATURE OF ACTION, PARTIES, AND JURISDICTION

1. This First Amended Counterclaim arises from a written consulting agreement, made effective November 1, 1996, between Alpine/AGTC and CoBon, which was titled "Consulting Agreement." A true and correct copy of the Consulting Agreement is attached hereto as Exhibit A and is incorporated herein. The Consulting Agreement provided that Alpine/AGTC, as independent contractors, were to provide consulting services in connection with CoBon's participation in the development of "synthetic" fuel ("synfuel") facilities that were to be sold to investors/owners who would then claim the significant and valuable tax credits that were made available by the facilities under Section 29 (later Section 45K) of the Internal Revenue Code, 26 U.S.C. § 29 (later 26 U.S.C. § 45K) ("Section 29"). The Consulting Agreement provided that, in consideration for those consulting services, Alpine/AGTC were to be paid consulting fees equal to thirty percent (30%) of proceeds received by CoBon for the tax credits made available to the investors/owners of the synfuel facilities that were developed and sold, as well as thirty percent (30%) of CoBon's profits from the sale to the investors/owners of the synfuel facilities of the chemical binding agent used to produce synfuel and thirty percent (30%) of CoBon's profits from initial royalty fees paid by the investors/owners of the synfuel facilities that were developed and sold. Alpine/AGTC performed under the Consulting Agreement, providing the consulting services called for by the Consulting

Agreement. Six synfuel facilities were developed and sold to investors/owners as a result of Alpine/AGTC's services. CoBon received and continues to receive streams of proceeds for the tax credits that were made available to the investors/owners, as well as binder fee and initial royalty fee profits, totaling over \$65,000,000 to date. However, CoBon has failed to pay Alpine/AGTC the consulting fees and the percentage of binder fee and initial royalty fee profits that are due and owing under the Consulting Agreement, and denies any obligation under the Consulting Agreement to pay consulting fees or a percentage of binder fee and royalty fee profits.

2. By this First Amended Counterclaim, Alpine/AGTC seek a declaratory judgment declaring: (a) that AGTC/Alpine are entitled to a current distribution of consulting fees and a percentage of CoBon's binder fee and royalty fee profits under the Consulting Agreement, and the amount of the distribution plus interest, (b) that Alpine/AGTC are entitled to future distributions of consulting fees and a percentage of binder fee and royalty fee profits under the Consulting Agreement, in amounts to be determined in the future by periodic and regular accountings that apply the terms of the Consulting Agreement, and (c) the rights and obligations of the parties to the Consulting Agreement. This First Amended Counterclaim is also for the recovery of damages caused by defendant CoBon's: (a) material breaches and repudiation of the Consulting Agreement, which entitles Alpine/AGTC to receive sums of money for services rendered; (b) attempt to retain for itself, without providing consideration, the substantial value of professional services provided by Alpine/AGTC; and (c) breaches of CoBon's fiduciary duties owed by reason of and under the Consulting Agreement. Furthermore, this First Amended Counterclaim seeks: (a) a determination and declaration that the limited liability company form of CoBon should be disregarded and treated

as an association of persons, and that CoBon's alter egos, namely Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and CE Ventures, shall each be held liable for any judgment rendered against CoBon in this action; (b) a determination and declaration that the limited liability company forms of CoBon and CoBon Synfuel #1, LLC, CoBon Synfuel #2, LLC, CoBon Synfuel #3, LLC and CoBon Synfuel #4, LLC (collectively the "CoBon Synfuel Companies") should be disregarded because those entities operate as a single business enterprise under the control of Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and CE Ventures, and that each constituent of that enterprise shall be held liable for any judgment rendered against CoBon or any other constituent in this action; (c) a determination and declaration that the limited liability company forms of the CoBon Synfuel Companies should be disregarded and treated as an association of persons, and that the alter egos of the CoBon Synfuel Companies, namely CoBon, Steven Nash, Robert Nash, W. Kelly Nash, and Anton Tonc, shall be held liable for any judgment rendered against any of the CoBon Synfuel Companies in this action; (d) a determination that CoBon was and remains the agent of Steven Nash, Robert Nash, W. Kelly Nash, and Anton Tonc for purposes of collecting and distributing proceeds from synfuel facilities, a portion of which is distributable to Alpine/AGTC, such that Steven Nash, Robert Nash, W. Kelly Nash and Anton Tonc shall be held liable for any judgment rendered against CoBon; (e) a determination that CoBon has engaged in fraudulent transfers under Utah Code Annotated § 25-6-5, and that these fraudulent transfers be remedied as provided in Utah Code Annotated § 25-6-8; and (f) a determination that CoBon has engaged in fraudulent transfers under Utah Code Annotated § 25-6-6, and that these fraudulent transfers be remedied as provided in Utah Code Annotated § 25-6-8.

3. Counterclaimant Alpine is a Pennsylvania corporation located in Camp Hill, Pennsylvania. Alpine's principal is Mark Rodak ("Rodak"). Alpine's business relates to the coal industry, and includes providing consulting services. Rodak has worked in the coal industry since his graduation from the Pennsylvania State University in 1980.

4. Counterclaimant AGTC is a New Jersey corporation located in Princeton Junction, New Jersey. AGTC's principal is Richard Visovsky ("Visovsky"). AGTC's business relates to the coal industry, and includes providing consulting services. Visovsky has worked in the coal industry since his graduation from the Pennsylvania State University in 1979.

5. Counterdefendant CoBon is a Utah limited liability company located in Midvale, Utah. CoBon is an engineering firm that was originally formed to assist Covol Technologies, Inc., now known as Headwaters Incorporated ("Covol"), in Covol's development of synfuel facilities that would use a synfuel technology owned by Covol. CoBon's principals were experienced in the power industry at the time of its formation. Since at least 2000, CoBon has been used solely for the purpose of receiving and distributing proceeds that are paid by the investors/owners of the six synfuel facilities that were developed as a result of Alpine/AGTC's performance of the Consulting Agreement, which proceeds constitute proceeds and profits for purposes of determining the contract price due and owing to Alpine/AGTC under the Consulting Agreement.

6. Counterdefendant Steven Nash is the reported manager of CoBon. Between January 1996 and November 22, 2006, Steven Nash was one of the two reported members of CoBon. His brother, counterdefendant Robert Nash, was the other reported member of CoBon during that period. On November 22, 2006, counterdefendants CB Ventures and CE Ventures, both Utah limited

liability companies, replaced Steven Nash and Robert Nash as the only reported members of CoBon. On information and belief, Steven Nash is the sole member of CB Ventures and Robert Nash is the sole member of CE Ventures. Steven Nash and Robert Nash, individually and through CB Ventures and CE Ventures, along with W. Kelly Nash and Anton Tonc, have had exclusive control of CoBon since 1996.

7. CoBon Synfuel #1, LLC, CoBon Synfuel #2, LLC, CoBon Synfuel #3, LLC and CoBon Synfuel #4, LLC, are Utah limited liability companies. Each of the CoBon Synfuel Companies was organized on or about December 26, 1996 by Steven Nash and Robert Nash “for the purpose of acquiring, designing, constructing, improving, equipping and operating coal briquette/extrusion and related product manufacturing facilities . . .” Since at least 2000, the CoBon Synfuel Companies has been used solely for the purpose of receiving proceeds, directly or indirectly, paid by the investors/owners of the six synfuel facilities that were developed as a result of Alpine/AGTC's performance of the Consulting Agreement, which proceeds constitutes proceeds and profits for the purpose of calculating the contract price due and owing Alpine/AGTC under the Consulting Agreement. Each of the CoBon Synfuel Companies is managed by CoBon, which, as alleged, is controlled and/or managed by Steven Nash, Robert Nash, W. Kelly Nash and Anton Tonc.

8. Counterdefendant W. Kelly Nash became a member of CoBon Synfuel #1, LLC and CoBon Synfuel #3, LLC in January 1999. On information and belief, W. Kelly Nash also became a member of CoBon Synfuel #2, LLC and CoBon Synfuel #4, LLC at that time. On information and belief, W. Kelly Nash became a member of the CoBon Synfuel Companies pursuant to a previous agreement with Steven Nash, Robert Nash, and Anton Tonc that he would have a participation

interest in CoBon's portion of proceeds and profits from synfuel facilities. It is as a result of this agreement, upon information and belief, that W. Kelly Nash participated in the management and control of CoBon.

9. Counterdefendant Anton Tonc also became a member of CoBon Synfuel #1, LLC and CoBon Synfuel #3, LLC in January 1999. On information and belief, Anton Tonc also became a member of CoBon Synfuel #2, LLC and CoBon Synfuel #4, LLC at that time. On information and belief, Anton Tonc became a member of the CoBon Synfuel Companies pursuant to a previous agreement with Steven Nash, Robert Nash, and W. Kelly Nash that he would have a participation interest in CoBon's portion of proceeds and profits from synfuel facilities. It is as a result of this agreement, upon information and belief, that Anton Tonc participated in the management and control of CoBon.

10. This Court has jurisdiction over the subject matter of this action under Utah Code § 78A-5-102, and has personal jurisdiction over the parties.

11. Venue is proper in this Court.

BACKGROUND ALLEGATIONS

A. Section 29 And The Use Of Coal Fines To Produce A Synfuel

12. The Consulting Agreement concerned the development of synthetic fuel manufacturing facilities. Significant tax credits were available under Section 29 of the Internal Revenue Code (later Section 45K) relating to such facilities.

13. In general, Section 29 tax credits were available to a taxpayer based upon: (a) sales to an unrelated third party, (b) of a fuel that qualified for Section 29 tax credit treatment (“synfuel”),

(c) which was produced at a facility that qualified for Section 29 tax credit treatment, and (d) which facility was owned by the taxpayer. Pursuant to Internal Revenue Service (“IRS”) application of Section 29: (a) a fuel was a synfuel qualifying for Section 29 tax credit treatment if it differed significantly in chemical composition from the substance used to produce the fuel (the “feedstock”); and (b) a facility qualified for Section 29 tax credit treatment if it was placed in service (put into operation) before July 1, 1998, and was build pursuant to a binding construction contract that had been entered into prior to January 1, 1997. Facilities that produced a synfuel and otherwise qualified for Section 29 tax credit treatment were, and are here, referred to as “synfuel facilities.” Section 29 tax credits were available only as to synfuel sales occurring prior to January 1, 2008 (as the sunset date of the Section 29 tax credit program was December 31, 2007).

14. A taxpayer could obtain a favorable private letter ruling (“PLR”) from the IRS confirming that Section 29 tax credits were available to the taxpayer for a particular facility, based upon satisfaction of the qualifications for claiming the credits.

15. The amount of Section 29 tax credits that were available (that could be claimed) was primarily a function of the heat content (expressed in Btu’s) of the synfuel being produced and sold. Sales of synfuel relevant to this case generated (made available) tax credits of approximately \$25 per ton. As a result, a one million ton per year synfuel facility was able to generate \$25 million of Section 29 tax credits each year. Because Section 29 gave a credit, rather than a deduction, each dollar of tax credit was the equivalent of a dollar in cash to taxpayer owners with sufficient taxable income.

16. One application of Section 29 was to use coal to produce synfuel. During the time coal derived synfuel facilities were being developed in 1996 through July 1, 1998, it was understood that the IRS required the use of mostly waste coal fines for Section 29 tax credits to be available. Coal fines are small pieces or particles of coal (less than 1/4" in diameter to dust size) that are a by-product of coal mining and processing. While some coal fines are marketable, coal fines that are not –waste coal fines – are stored in either piles or slurry ponds, which are found at most if not all coal mining and processing sites. Waste coal fines are unmarketable as a result of their low Btu value, which is a result of their small size and their situation in ponds and/or with non-coal material, and the cost to process and handle the material. With the Section 29 tax credit, however, synfuel made from waste coal fines could be more profitable than raw coal.

17. Covol was one of several companies that developed processes for producing an agglomerated (binded) coal product from waste coal fines in the early to mid 1990's. The idea was to use coal fines to produce a briquette sized coal product that would be sized and burn like commercial sized coal. Covol's patented process was intended to basically introduced a proprietary polymer-based liquid binder agent to the coal fines feedstock and applied pressure to form a briquette or pellet sized coal product. The Covol patented process produced a fuel product that differed significantly in chemical composition from the coal fines used to produce it, such that the product could qualify as a synfuel under Section 29. It was this capability to induce a significant chemical change (rather than any ability to produce an agglomerated product) that meant the Covol patented process was a "synfuel technology," meaning it could be used to produce synfuel. In September

1995, Covol obtained confirmation from the IRS that its patented process produced what qualified as a synfuel.

B. Alpine/AGTC And CoBon Had A History Of Working With Each Other Prior To Entering Into The Consulting Agreement

18. Alpine/AGTC worked with CoBon in connection with the development of synfuel facilities at least from early March 1996 through the time the Consulting Agreement was entered into in early December 1996. From early March 1996 until mid-July 1996, Alpine/AGTC worked with CoBon in connection with Covol's development of synfuel facilities. During this time, both Alpine/AGTC and CoBon were under separate contracts with Covol to assist Covol in developing synfuel facilities. Covol eventually successfully developed one of the synfuel projects that Alpine/AGTC, working with CoBon, had presented to Covol. On July 19, 1996, Covol terminated its contract with Alpine/AGTC and, on August 20, 1996, renegotiated its contract with CoBon, allowing CoBon itself to develop synfuel facilities. From August 1996 until the Consulting Agreement was entered into, Alpine/AGTC worked with CoBon to develop synfuel facilities in anticipation of entering into the Consulting Agreement, pursuant to an August 28, 1996 oral agreement between Alpine/AGTC and CoBon to enter into the Consulting Agreement.

19. CoBon did not have any meaningful experience or contacts in the coal mining or coal marketing industry. On the other hand, Alpine/AGTC had extensive experience and contacts in the eastern United States coal industry. CoBon needed the knowledge, experience and contacts of Alpine/AGTC in order to identify which coal operations had the most advantageous source of coal fines for a significant operation and a management that would be willing to do a synfuel project, and

in order to get the attention of senior management so as to get projects in place and going within the short time frame left by Section 29. Alpine/AGTC also had contacts with potential synfuel project development partners. Alpine/AGTC had enjoyed close working relationships with management of extensive numbers of coal operations in the eastern United States, as well as other consultants in the industry who could put them in contact with key managers and potential synfuel project development partners. Moreover, Alpine/AGTC had extensive experience in the marketing of coal and knew who likely would be purchasers of this new coal product, the synfuel.

20. CoBon was authorized to develop synfuel facilities by an August 20, 1996 letter agreement and a September 10, 1996 License Agreement with Covol. These agreements gave CoBon the exclusive right to pursue its own development and marketing of synfuel facilities that would use the Covol synfuel technology, as to projects or areas identified in the August 20, 1996 letter. CoBon, under the September 10, 1996 License Agreement, originally was capped at developing or authorizing the development of synfuel facilities having an aggregate capacity of 1.5 million tons per year. Subsequently, after synfuel facilities were placed in service, Covol allowed CoBon to license the synfuel facilities that were developed to use the Covol synfuel technology so that CoBon exceeded the 1.5 million ton per year cap originally created by the License Agreement.

21. CoBon always contemplated participating in the development of synfuel facilities that would be financed by and sold to tax-oriented investors, who would claim the credits. Tax-oriented investors were large companies with sufficient taxable income so as to be able to use the tax credits that would be available. In general, all synfuel projects entailed the same basic development steps. First, the developer had to identify and locate project sites with access to a suitable coal fines source

and access to a market for the synfuel (which usually was a site at a coal company) and where the site owner would be willing to timely agree to a synfuel project. Next, the developer would negotiate with the site and coal fines owner(s) and synfuel purchaser(s) (which could be one company) for contracts or commitments to lease the site, supply coal fines, and purchase synfuel. A project was “put in place” by obtaining firm commitments or contracts for these three essential elements. Once a project was in place, the developer would market the project to tax-oriented investors for construction financing and investment. The developer would also have to obtain all necessary permits and have the synfuel facility constructed (under a pre-January 1, 1997 construction contract). The investor/owner would also have to be licensed to use the applicable synfuel technology, as well as buy the synfuel facility, in order to be able to produce synfuel. Success would be the financing, sale and licensing of a project. The financing would enable the synfuel facility to be built. The sale of the project, and/or licensing the investor/owner to use a synfuel technology, would enable the developer to receive streams of proceeds paid by the investor/owner for the Section 29 tax credits that were made available, as well as up-front initial royalty fees and fees from the sale of binder agent to the facilities. Developers could participate in a synfuel project in any number of ways, including going solo, or by a joint venture arrangement with other developers, or by simply licensing another developer to do the project. At the time the Consulting Agreement was entered into, CoBon was contemplating participating in synfuel projects in each of these manners, with the intent of minimizing its expenses while maximizing its opportunity to receive streams of proceeds paid by investors/owners.

C. Negotiation And Execution Of The Consulting Agreement And The Projects CoBon Pursued With Alpine/AGTC's Assistance

22. Alpine/AGTC and CoBon exchanged drafts of the Consulting Agreement between November 1, 1996 and December 5, 1996. CoBon executed the Consulting Agreement on December 5, 1996, and Alpine/AGTC executed it on December 10 or 11, 1996. The Agreement was made effective November 1, 1996. Alpine/AGTC were referred to as "A&A" in the Consulting Agreement.

23. By the time Alpine/AGTC and CoBon entered into the Consulting Agreement, Alpine/AGTC had already been working on identifying and introducing to CoBon several synfuel projects, pursuant to the parties' August 28, 1996 oral agreement to enter into the Consulting Agreement. These projects were the following:

a. A project to develop one or more synfuel facilities at Consolidation Coal Company ("Consol") sites, which in July 1997 became focused upon developing a synfuel facility at Consol's Robena plant site in Green County, Pennsylvania (the "Consol Project"). After July 1997, this Project sometimes was referred to as simply the "Robena Project";

b. A project to develop a synfuel facility at a PBS Coal Company ("PBS") site, which in 1997 became focused upon developing a synfuel facility at PBS' Shade Creek plant site in Somerset County, Pennsylvania (the "PBS Project"). This Project sometimes was referred to as the "PBS/Somerset" or "Somerset" Project;

c. A project to develop synfuel facilities in connection with a joint venture entity between CC Pace Capital ("Pace") and Carbon Resources of Florida, Inc. ("Carbon

Resources”) (combined “Pace Carbon Resources”), which by the end of 1996 and early 1997 became focused upon developing four synfuel facilities located in Virginia and West Virginia (the “Pace Project”). This Project sometimes was referred to in the plural, as the “Pace Projects,” due to the fact that it involved four synfuel facilities;

- d. A project to develop a synfuel facility at Edison Mission’s co-generation plant site located in Grant Town, West Virginia (the “Grant Town Project”); and

- e. A project to develop a synfuel facility at Bel Air Coal Sales’ waste coal fines reserve site in Mather, Pennsylvania (the “Bel Air Project”). This Project sometimes was referred to as the “Mather Project.”

In addition, CoBon had been introduced to two other synfuel projects before August 1996, independently from Alpine/AGTC. In August 1996, CoBon immediately requested Alpine/AGTC’s assistance on these two projects, and Alpine/AGTC proceeded to provide substantial assistance on the projects. These other two projects were:

- a. A project to develop a synfuel facility at a Miller Mining Company site in Sugar Creek, Ohio (the “Miller Project”); and

- b. A project to develop a synfuel facility at Mon View Mining Company’s (“Mon View”) waste coal fines reserve site in New Eagle, Pennsylvania (the “original Mon View Project”). The original Mon View Project and the Miller Project were pursued starting in late 1996 by a CoBon joint venture with another developer, Double Day, Inc. (“Double Day”), possibly through Double Day’s affiliate Diversified Resources International, Ltd.

("Diversified"). The Miller and original Mon View Projects sometimes were referred to as the "Double Day" or "Diversified" Projects.

Also, in 1997, after the Consulting Agreement had been entered into, CoBon considered pursuing two additional synfuel projects with Alpine/AGTC's assistance and support. These were:

- a. A project to develop a synfuel facility at Mon View's New Eagle waste coal fines reserve site, which had been the site for the original Mon View Project, but this time to be pursued in connection with Creative Environmental Solutions, Inc's project to develop a coal fines processing or "wash" facility at the site (the "subsequent Mon View Project"); and
- b. A project to develop a synfuel facility at a LTV Steel's waste coal fines reserve site at Nemacolin, Pennsylvania (the "Nemacolin Project").

24. Although CoBon was the actual party negotiating with the coal companies and development partners to put the PBS, Consol, Bel Air, Pace and Grant Town Projects in place, the negotiations were done with the substantial assistance and support of Alpine/AGTC. As to the PBS, Consol and Bel Air Projects, Alpine/AGTC would have the face-to-face meetings with management of the host coal companies, often without CoBon personnel. Alpine/AGTC would liaise between CoBon and the coal companies by introducing the synfuel project concept, and then presenting terms and counter-terms proposed by the parties to each other. The terms being negotiated were set forth in draft letters of intent between CoBon and the coal companies, which Alpine/AGTC would assist and support CoBon in drafting and would present to the coal companies. The negotiations regarding the Pace Project were with Pace Carbon Resources, another developer, regarding licensing Pace

Carbon Resources to develop the Project. On that Project, Alpine/AGTC introduced CoBon to Pace Carbon Resources senior management, set up and attended negotiating meetings between CoBon and Pace Carbon Resources, consulted with CoBon regarding the negotiations, and assisted CoBon in drafting the proposed letter of intent with Pace Carbon Resources. CoBon was able to timely pursue the PBS, Consol, Bel Air and Pace Projects under the schedule imposed by Section 29 only because Alpine/AGTC was able to provide CoBon with timely access to senior management. As to the Miller and the original Mon View Projects, after CoBon immediately pulled Alpine/AGTC into the Projects in August 1996, Alpine/AGTC met with Miller Mining management on behalf of CoBon and consulted with CoBon regarding a letter of intent for the Project. However, sometime in October 1996, CoBon decided to allow Double Day to take the lead in developing these two Projects and proceeded to negotiate a joint development agreement with Double Day regarding the two Projects.

25. As a result of Alpine/AGTC's substantial assistance and support, CoBon entered into letters of intent for the PBS, Consol and Bel Air Projects, and contracted with Covol to preserve its participation in the Pace Project, all within four weeks of having entered into the Consulting Agreement. This was the result of Alpine/AGTC's ability to put CoBon in contact with upper management of its development partners and would not have occurred if CoBon had not retained the services of Alpine/AGTC. The letters of intent regarding the PBS, Pace, Consol, and Bel Air Projects that CoBon was negotiating at the time the Consulting Agreement was entered into and afterwards (with Alpine/AGTC's assistance and support) and the joint development agreement CoBon was negotiating with Double Day, contemplated that CoBon would participate in the projects in different manners:

a. The letters of intent for the PBS and Bel Air Projects proposed joint ventures between CoBon and the host coal company, under which CoBon would be responsible for obtaining permits, obtaining financing, getting the facility designed and constructed, marketing and selling the facility, and sublicensing the investor/owner to use the Covol synfuel technology. The host coal company would be responsible for providing the project site and coal fines supplies, and purchasing synfuel, under final contracts to be negotiated.

b. The letter of intent for the Pace Project proposed a joint venture between CoBon and Pace Carbon Resources under which CoBon's only responsibility would have been to sublicense the joint venture entity to develop synfuel facilities that would use the Covol synfuel technology. Pace Carbon Resources' responsibility would have been to complete the development of synfuel facilities, including obtaining financing, constructing and selling the synfuel facilities. The joint venture entity would have sub-sublicensed the investors/owners to use the Covol synfuel technology. Pace Carbon Resources was proposing the same division of responsibilities by means of a sublicense agreement between it and CoBon, rather than a joint venture agreement.

c. The letter of intent for the Consol Project provided CoBon with a six month right to evaluate a number of Consol sites where there were coal fines reserves, with Consol preliminarily committed to providing one or two sites selected by CoBon, providing coal fines, and purchasing synfuel, subject to negotiation of a final contract. CoBon was responsible for getting the synfuel facilities financed, constructed and permitted, which meant it was responsible for marketing the Project to tax-oriented investors.

d. The joint development agreement for the Miller and original Mon View Projects provided for a division of responsibilities between CoBon and Double Day for developing the subject synfuel facilities. CoBon's responsibilities were to sublicense the joint venture entity to develop synfuel facilities that would use the Covol synfuel technology, and assist in marketing the project to tax-oriented investors for financing and sale. Double Day was responsible for obtaining contracts for use of the sites, supplies of feedstock and sale of synfuel, as well as obtaining financing and constructing the facilities. The joint venture entity would sell the synfuel facilities and sub-sublicense the investors/owners to use the Covol synfuel technology.

26. At the time the Consulting Agreement was negotiated and entered into, Alpine/AGTC and CoBon, as well as other project participants, referred to synfuel facilities as "briquette manufacturing facilities" or "coal agglomeration facilities," which terms were used to mean facilities that would use either a briquettor, a pelletizer or an extruder to manufacture briquette or pellet sized synfuel. The Consulting Agreement referred to synfuel facilities as "briquette manufacturing facilities" and "briquetting facilities."

D. The Goal Of The Consulting Agreement Was Development Of Facilities That Qualified For Section 29 Tax Credit Treatment

27. Section 1.0 of the Consulting Agreement set forth the goal of that agreement, which was development of facilities that would qualify for Section 29 tax credit treatment, that is, synfuel facilities. Section 1.0 stated that Alpine/AGTC agreed to provide consulting services and assistance in furtherance of the development of:

briquette manufacturing facilities (including suitable sites and plants) capable of producing coal briquettes and related products utilizing the Coal Technology, which will qualify for I.R.C. Section 29 tax credits for up to an eleven (11) year time period or such longer term as may be allowed by Congressional extension hereafter.

E. Alpine/AGTC Agreed To Timely Provide To CoBon A Specified Scope Of Work

28. Sections 1.0 and 1.2 of the Consulting Agreement identified the consulting services Alpine/AGTC were to provide to CoBon, which was Alpine/AGTC's scope of work under the Consulting Agreement. Alpine/AGTC agreed to assist and support CoBon in connection with the four of the five basic steps of developing synfuel facilities, which were: (a) putting a synfuel project in place by identifying and obtaining contracts ("project contracts") or firm commitments for the three essential elements of a synfuel project (a site, a feedstock source and a purchaser of the synfuel); (b) obtaining permits; (c) constructing the facility; and (d) marketing the project for construction financing and sale. The other basic development step was licensing the synfuel facility.

29. Section 1.0 stated Alpine/AGTC's scope of work in general. That section provided that Alpine/AGTC were to provide CoBon with: (a) consulting services and assistance to further CoBon's identification, evaluation, development and construction of synfuel facilities that would implement the Covol synfuel technology (which was called the "Coal Technology"); and (b) services and assistance in connection with CoBon's marketing of both (i) synfuel and (ii) the synfuel facilities themselves, to third party purchasers. Section 1.0 of the Consulting Agreement stated:

Consulting Services and Project Development Assistance. A & A, at its own expense, agrees to and shall (i) furnish CoBon with necessary and reasonable consulting services and assistance in furtherance of CoBon's identification, evaluation, development and construction of briquette manufacturing facilities (including suitable site and plants) capable of producing coal briquettes and related products utilizing the Coal Technology, which will qualify for I.R.C. Section 29 tax

credits for up to an eleven (11) year time period or such longer term as may be allowed by Congressional extension hereafter; and (ii) furnish CoBon with necessary and reasonable services and assistance in connection with the marketing of the coal briquettes and related products, and the manufacturing facilities, to third party purchasers, all as specified herein, including paragraph 1.2.

30. Section 1.2 of the Consulting Agreement set forth the particulars of Alpine/AGTC's scope of work. Section 1.2 provided that Alpine/AGTC were to provide assistance and support regarding: (a) CoBon's identification, evaluation and obtaining of suitable raw material, project sites and purchasers of synfuel; (b) CoBon's construction and management of synfuel facilities before their sale; and (c) CoBon's securing of all necessary permits and regulatory compliance. Section 1.2 expressly **excluded** from Alpine/AGTC's scope of work: (a) providing financing or funds for either construction or management of any synfuel facility or permits, and (b) furnishing construction labor or direct management of any synfuel facility. Section 1.2 stated:

Project Development. A & A shall devote such consulting time and resources as are reasonably required to assist and support CoBon in connection with the identification, evaluation and obtaining of suitable raw material resources, the selection of suitable briquette facility site locations, the construction and management of an adequate briquette plant and operation, the negotiation and acquisition of coal product sales contracts, and the securing of site permits and confirmation of regulatory compliance respecting all aspects of plant operation. A & A shall cooperate fully with CoBon and shall provide bi-monthly progress reports to CoBon with respect to its efforts and the status of project development.

Notwithstanding A & A's foregoing agreement to assist and support CoBon, nothing herein shall be construed as requiring A & A (i) to finance the construction or management of briquette manufacturing facilities, (ii) to pay site permit or regulatory compliance related fees and costs or (iii) to furnish construction labor or direct management of briquette manufacturing facilities. A & A shall be solely responsible to furnish reasonably requested consultation in connection with these undertakings by CoBon.

31. The scope of assistance and support that Alpine/AGTC actually had to provide in order to perform their scope of work under the Consulting Agreement depended upon how CoBon participated in synfuel projects and, specifically, what development steps were CoBon's responsibilities as to the projects in which it was participating. Section 1.0 stated that Alpine/AGTC had to provide assistance and support as was "necessary and reasonable." Section 1.2 stated that Alpine/AGTC had to provide assistance and support as was "reasonably required." Sections 1.1 and 1.2 provided that Alpine/AGTC had to provide assistance and support as was "reasonably requested" by CoBon.

32. Section 1.3 of the Consulting Agreement identified July 1, 1998 as the deadline to complete development of synfuel facilities, and provided that Alpine/AGTC had to timely perform their scope of work to enable CoBon to meet that deadline. July 1, 1998 was the then-current Section 29 deadline for placing synfuel facilities in service. Section 1.3 stated:

Development Schedule. A & A and CoBon acknowledge that binding construction agreements required for purposes of satisfying Section 29 tax credit qualification must be negotiated and executed by CoBon, or its assigns, no later than December 31, 1996 or such earlier time as may be required by statute. Similarly CoBon's development of any facility site(s) and plant(s) shall be completed on or before target production deadline of July 1, 1998 ("Production Date") or such earlier time as CoBon may determine to be commercially reasonable. Consultation and assistance by A & A hereunder shall be furnished so as to facilitate CoBon's completion of the agreement(s) and development of the project(s) in accordance with the foregoing schedule.

33. CoBon never communicated to Alpine/AGTC at the time the Consulting Agreement was being negotiated or entered into that Alpine/AGTC's assistance or support on any synfuel project in which CoBon participated or considered participating in was or would be excluded from

Alpine/AGTC's scope of work under the Consulting Agreement, including the Projects on which Alpine/AGTC were working on at that time.

F. CoBon Agreed To Pay A Specified Contract Price

34. The Consulting Agreement provided that Alpine/AGTC would be compensated for their services based upon CoBon's receipt, if any, of one or more of three types of proceeds that investors/owners of synfuel facilities paid to parties who participated in developing the synfuel facilities, which were: (a) proceeds for the tax credits made available to investors/owners of the synfuel facilities, which was the portion of the purchase price for synfuel facilities, and the portion of the license fee for the synfuel technology, that were based (calculated) upon the generation of Section 29 tax credits, (b) initial royalty fees, which were the up-front, one-time, fixed portion of the license fee for the synfuel technology, and (c) binder fees, which was the consideration paid for the binder agent used as part of the synfuel technology to make synfuel.

35. Section 2.0 of the Consulting Agreement addressed Alpine/AGTC's right to be paid based upon CoBon's receipt of proceeds for the tax credits made available to the investors/owners of synfuel facilities, which were called "Proceeds" in the Consulting Agreement. Section 2.0 stated:

Consulting Fee. In consideration of its performance of the provisions hereof, A & A shall be entitled to receive a consulting fee equal to thirty percent (30%) (to be split evenly between AGTC and Alpine) of the cash proceeds and other consideration (including stock, tax credits distributed or retained, etc.) received by CoBon for tax credits (collectively referred to as "Proceeds") generated by virtue of CoBon's sublicense (or other form of transfer, assignment or business agreement) of the Coal Technology to third party purchaser(s) of the briquette manufacturing facility(ies) ("Consulting Fee"). Subject to the provisions of section 4.0, the Consulting Fee shall be paid from such Proceeds as provided herein.

Section 4.0 provided that Alpine/AGTC were not entitled to be paid the “Consulting Fee” from the first \$700,000 in “Proceeds” that CoBon received, plus CoBon’s laboratory costs for having feedstock and synfuel analyzed, which instead was to be retained by CoBon as reimbursement for its expenses incurred in obtaining its license of the Covol synfuel technology and in developing synfuel facilities.

36. Section 3.0 of the Consulting Agreement addressed Alpine/AGTC’s right to be paid based upon CoBon’s receipt of initial royalty fees and binder fees. Section 3.0 stated, in relevant part:

In the event Cobon successfully negotiates a Sublicense Royalty Fee payment from a prospective purchaser for an amount greater than \$3.00 per ton, CoBon agrees to share any profit derived therefrom with A & A on a 70%/30% basis. Likewise, in the event CoBon successfully negotiates a Binder Fee payment from a prospective purchaser for an amount greater than CoBon’s actual cost, CoBon agrees to share any profit derived therefrom with A & A on a 70%/30% basis.

37. Sections 5.0 and 6.0 of the Consulting Agreement provided that Alpine/AGTC’s right to be paid based upon CoBon’s receipt of proceeds for tax credits, initial royalty fees and binder fees, as per Sections 2.0 and 3.0, would continue as long as CoBon received distributable proceeds for tax credits, initial license fees and binder fees. Sections 5.0 and 6.0 provided that the term of the Consulting Agreement was the entire length of the Section 29 tax credit program – as long as the synfuel facility owners could claim the Section 29 tax credits (for synfuel sales occurring prior to January 1, 2008).

38. Section 2.4 of the Consulting Agreement provided that Alpine/AGTC expressly assumed the risk of not being paid “Consulting Fees,” without recourse to CoBon even if they fully

performed, if no facility was timely developed, or if none of the facilities that were developed qualified for Section 29 tax credit treatment. Section 2.4 stated:

Acknowledgment of Risk. A & A expressly acknowledge the risks of loss and of nonpayment of the foregoing consideration ["Consulting Fees"] in the event of an unsuccessful development of briquetting facilities as contemplated by CoBon, including without limitation, the parties' inability or failure to successfully complete all required activity within the statutory time frame and the possibility of the Internal Revenue Service's non-recognition of any of the participate's tax credit eligibility. A & A shall not be entitled to receive the consideration referenced until and unless all necessary development steps have been completed and tax credit qualification has been confirmed by the Internal Revenue Service as provided herein.

39. At the time the Consulting Agreement was negotiated and entered into, Alpine/AGTC intended, and CoBon consistently demonstrated an intention, that proceeds distributable to Alpine/AGTC under the terms of the Consulting Agreement would include proceeds, if any, relating to any of the synfuel projects that CoBon was then pursuing or considering or would participate in.

G. During The Initial Two Year Period In Which CoBon Received "Proceeds" CoBon Could Make Distributions To Itself Only If It Made Proportionate Distributions To Alpine/AGTC, And Afterwards, CoBon Had To Pay The "Consulting Fee" Within 30 Days Of Its Receipt Of "Proceeds"

40. Section 2.1 of the Consulting Agreement required CoBon to hold in an escrow account, for the benefit of itself and Alpine/AGTC, the "Proceeds" it received during the initial two year period in which it received "Proceeds," in order to allow for confirmation of the availability of the Section 29 tax credits to the owners paying the "Proceeds." Under section 2.1, during that period, CoBon could distribute "Proceeds" to itself only if it made a proportionate distribution to Alpine/AGTC according to the parties' 70/30 split of "Proceeds." Section 2.1 stated that

Alpine/AGTC had a "30% interest" in the cash portion of "Proceeds" received during this initial two year period.

41. Section 2.2 of the Consulting Agreement provided that, after the initial two year period of CoBon's receipt of "Proceeds" and for the remainder of the term of the Consulting Agreement, CoBon was required to pay the "Consulting Fee" within 30 days of its receipt of any "Proceeds." Section 2.2 stated:

Consulting Fee Payment During Remaining Term. During the remaining term of this Agreement that cash proceeds are received for tax credits, and provided satisfactory confirmation has been reasonably obtained during the initial two year period described above, CoBon shall pay the Consulting Fee to A & A within thirty (30) days of its receipt of the cash proceeds.

H. The Consulting Agreement Required CoBon To Provide Notice Of A Material Breach In Order For CoBon To Be Able To Prematurely Terminate The Consulting Agreement For A Material Breach By Alpine/AGTC

42. Section 5.0 of the Consulting Agreement provided that CoBon could terminate the Agreement upon 60 days written notice if Alpine/AGTC were in material breach, but only if CoBon gave notice of the breach to Alpine/AGTC and allowed them 45 days to cure the breach. Section 5.0 stated, in relevant part:

Term and Termination. The term of this Agreement shall commence on November 1, 1996 and shall, unless earlier terminated upon sixty (60) days advance written notice for legal cause, continue for a term of eleven years until October 31, 2007 or for so long as a purchase can qualify for tax credit eligibility, including any extensions hereof under paragraph 6.0. For purposes hereof, legal cause shall be defined as (i) any act or omission on the part of A & A constituting a material breach of the performance of its duties hereunder, which shall remain uncured to the reasonable satisfaction of Cobon for a period of forty five (45) days following receipt of a written request by CoBon that such act or omission be immediately cured

I. Alpine/AGTC Performed Their Scope Of Work Under The Consulting Agreement

43. Alpine/AGTC assisted and supported CoBon regarding the Consol, PBS, Pace, Bel Air, Grant Town, Miller, Nemacolin and original and subsequent Mon View Projects.

44. Alpine/AGTC were CoBon's liaisons with the actual or potential project hosts of the PBS, Consol, Bel Air, Nemacolin and subsequent Mon View Projects, as well as with potential and actual vendors, contractors and equipment suppliers located in Pennsylvania, West Virginia, and Maryland. CoBon's business relationships with project hosts, vendors or suppliers located in these states were through Alpine/AGTC. CoBon sometimes would rely upon Alpine/AGTC to draft parts or all of several of CoBon's project related communications.

45. Alpine/AGTC assisted and supported CoBon regarding the identification, evaluation and obtaining of suitable synfuel project sites, coal fines resources and synfuel sale contracts with regard to the Consol, Pace, PBS, Miller, original and subsequent Mon View, Bel Air, Grant Town and Nemacolin Projects. Absent Alpine/AGTC's assistance and support of CoBon regarding the identification, evaluation and obtaining of suitable synfuel project sites, coal fines resources and synfuel sale contracts with regard to the Consol, PBS, Pace Bel Air, Grant Town, Nemacolin and subsequent Mon View Projects, these Projects would not have been made available to CoBon and CoBon would not have participated in these Projects.

46. Alpine/AGTC assisted and supported CoBon regarding permitting for synfuel projects with regard to the Consol, PBS and Bel Air Projects.

47. Alpine/AGTC assisted and supported CoBon regarding the marketing of synfuel projects in general and with regard to the Consol, PBS, original Mon View and Bel Air Projects.

48. Alpine/AGTC assisted and supported CoBon regarding the construction of the Consol Project synfuel facility, which was the only synfuel facility construction overseen by CoBon.

J. Six Synfuel Facilities Of Three Synfuel Projects That Alpine/AGTC Introduced To CoBon Were Timely Placed In Service And Have Generated Significant And Valuable Section 29 Tax Credits For Their Investors/Owners

49. CoBon, through its then wholly owned or controlled project companies CoBon Synfuel #1, LLC and Robena, LLC, participated in the Consol Project, due to and with the assistance and support of Alpine/AGTC, which Project resulted in the development of a facility that qualified for Section 29 tax credit treatment, originally located at Consol's Robena site in Green County, Pennsylvania (the "Robena Synfuel Facility"). CoBon, through its then wholly owned or controlled project companies Robena LLC or CoBon Synfuel #2, LLC, entered into the project contracts for the Consol Project site, feedstock supplies and sale of synfuel. CoBon, through its then-wholly owned or controlled project companies Robena LLC and CoBon Synfuel #2, LLC, oversaw construction of this facility, using a pre-January 1, 1997 construction contract belonging to CoBon. In June 1998, CoBon, through its project company CoBon Synfuel #2, LLC, sold the Consol Project synfuel facility to an affiliate of Providian Financial Corporation ("Providian"), the Project's original investor/owner, who obtained a favorable PLR for that facility in October 1998.

50. CoBon participated in the PBS Project, due to and with the assistance and support of Alpine/AGTC, which Project resulted in the development of a facility that qualified for Section 29 tax credit treatment, located at PBS' Shade Creek site in Somerset County, Pennsylvania (the "PBS

Synfuel Facility”). In May 1998, weeks before the July 1, 1998 deadline for placing synfuel facilities in service, West Materials had stepped in to finance the construction of the Project’s synfuel facility. West Material’s investment resulted in a restructuring of the PBS Project, which meant CoBon participated in the construction and sale of the PBS Synfuel Facility as a partial owner, rather than the sole owner, of the project company that oversaw the construction and sale. Double D Energy Association, the project company that CoBon had jointly formed with Double Day for the Miller and original Mon View Projects, became the project company for the PBS Project, with West Materials owning sixty percent of the company, and CoBon and Double Day each owning twenty percent. Double D Energy Association (which subsequently changed its name to Somerset Synfuel No. 1, LLC (“Somerset”)) oversaw the construction of the Project’s synfuel facility, using a pre-January 1, 1997 construction contract belonging to West Materials. Somerset entered into project contracts for the site and feedstock supply and sale of synfuel for the PBS Synfuel Facility, after that facility had operated under commitments for that site and feedstock supply and synfuel sales that CoBon had obtained with Alpine/AGTC’s assistance and support. Somerset eventually sold the PBS Project to an affiliate of Pennsylvania Power & Light (“PP&L”), the investor/owner of the PBS Synfuel Facility, in December 1999, which sale was amended in June 2000. PP&L obtained a favorable PLR for the Project in November 2001.

51. CoBon participated in the Pace Project, due to and with the assistance and support of Alpine/AGTC, which Project resulted in the development of four facilities that qualified for Section 29 tax credit treatment, one located in Virginia and the other three located in West Virginia (the “Pace Synfuel Facilities”). After CoBon’s introduction of the Project to Pace Carbon Resources,

due to and with Alpine/AGTC's assistance and support, Pace Carbon Resources obtained the project contracts, oversaw the construction of the facilities using pre-January 1, 1997 construction contracts that belonged to it, obtained permits and financing, and sold the facilities to a consortium of investors/owners. The investors/owners of the Pace Synfuel Facilities obtained favorable PLR's for those facilities. The Pace Synfuel Facilities were subject to an IRS audit regarding placed in service date issues, which was concluded in favor of allowing the tax credits claimed by investors/owners. In late December 1996, CoBon contracted with Covol to preserve its participation in the Pace Project, after Pace Carbon Resources had gone directly to Covol to obtain license to the Covol synfuel technology that Pace Carbon Resources needed to complete development of the Pace Project.

52. CoBon, as a result of agreements with Covol, participated in the licensing of the Pace Synfuel Facilities to use the Covol synfuel technology. CoBon and Covol agreed in November 1999 that CoBon had used a portion of its license capacity (from Covol) to develop synfuel facilities on the Pace Synfuel Facilities (as well as on the PBS and Robena Synfuel Facilities), and CoBon received a portion of the proceeds for tax credits, the initial royalty fee, and the binder fees paid by the investors/owners of the Pace Synfuel Facilities. CoBon referred to a portion of the Pace Project as "its" synfuel project.

53. By the December 31, 2007 end of the Section 29 tax credit program, the PBS, Pace and Robena Synfuel Facilities generated well over \$1 billion of Section 29 tax credits for their investors/owners.

K. No Project On Which Alpine/AGTC Worked For CoBon Failed To Be Developed As A Result Of Missing The Section 29 Deadline Of July 1, 1998 For Placing Synfuel Facilities In Service

54. CoBon did not fail to develop or sell any synfuel facility as a result of missing the Section 29 deadline of July 1, 1998 for placing synfuel facilities in service.

L. CoBon Never Provided Notice Of A Material Breach By Alpine/AGTC

55. CoBon never notified Alpine/AGTC that they had materially breached the Consulting Agreement.

56. CoBon repeatedly acknowledged that Alpine/AGTC were performing their scope of services under the Consulting Agreement and the value of Alpine/AGTC's services while Alpine/AGTC were performing that scope of services. CoBon, both by itself and acting through its wholly owned project companies and/or in the capacity of general partner of the partnership that owned the Robena Synfuel Facility, repeatedly acknowledged that Alpine/AGTC had performed their scope of services under the Consulting Agreement and the value of Alpine/AGTC's services after Alpine/AGTC had performed that scope of services.

M. CoBon Received Millions Of Dollars As Its Share of The Proceeds For Tax Credits, And Profits On Binder Fees And Initial Royalty Fees, Paid By The Investors/Owners Of The PBS, Pace And Consol Projects Synfuel Facilities

57. CoBon, both itself and through its wholly owned or controlled project companies, received and continues to receive significant proceeds totaling in the millions of dollars that constitute "Proceeds" for purposes of the Consulting Agreement and profits on binder fees and initial royalty fees under the Consulting Agreement, which Alpine/AGTC are entitled to be paid a

percentage of under the terms of the Consulting Agreement. The amount of such proceeds received by CoBon needs to be verified in an accounting.

58. Starting in April 2002 and through January 2008, CoBon received at least \$3,284,802 as its share of what were called “Contingent Payments” paid by the investor/owner of the PBS Synfuel Facility. The “Contingent Payments” qualified as “Proceeds” for purposes of the Consulting Agreement. The amount of “Contingent Payments” from the PBS Synfuel Facility received by CoBon needs to be verified in an accounting.

59. Starting in August 2000 and through February 2008, CoBon received at least \$18,492,180 as its share of what were called “Earned Royalty Fees” paid by the investor/owner of the PBS Synfuel Facility. The “Earned Royalty Fees” qualified as “Proceeds” for purposes of the Consulting Agreement. The amount of “Earned Royalty Fees” from the PBS Synfuel Facility received by CoBon needs to be verified in an accounting.

60. Starting in September 2001 and through September 2008, CoBon received at least \$27,350,966 as its share of what were called “Earned Royalties” paid by the investors/owners of the Pace Synfuel Facilities. The “Earned Royalties” qualified as “Proceeds” for purposes of the Consulting Agreement. The amount of “Earned Royalties” from the Pace Synfuel Facilities received by CoBon needs to be verified in an accounting.

61. In December 2001, CoBon received \$1,462,500 as its share of what was called the “Initial Royalty” paid by the investor/owner of the PBS Synfuel Facility. The “Initial Royalty” qualified as profits on initial royalty fees under the Consulting Agreement. The amount of “Initial Royalty” from the PBS Synfuel Facility received by CoBon needs to be verified in an accounting.

62. Starting in January 2000 and through February 2008, CoBon received at least \$9,194,561 as its share of what were identified as profits from binder fees paid by the investors/owners of the Pace Synfuel Facilities. These amounts received by CoBon qualified as profits on binder fees under the Consulting Agreement. The amount of binder fee profits from the Pace Synfuel Facilities received by CoBon needs to be verified in an accounting.

63. Starting in May 2003 and through December 2006, CoBon received in excess of \$5,756,584 as its share of Covol's share of what were called "Note Payments" paid by the investor/owner of the Robena Synfuel Facility under Providian's August 2002 sale of that facility. The "Note Payments" qualified as "Proceeds" for purposes of the Consulting Agreement. The amount of "Note Payments" from Providian's sale of the Robena Synfuel Facility received by CoBon needs to be verified in an accounting.

64. In January 1999 and March 2001, CoBon received at least \$85,455 as its share of binder fees paid by the investor/owner of the Robena Synfuel Facility. These amounts received by CoBon qualified as profits on binder fee under the Consulting Agreement. The amount of binder fee profits from the Robena Synfuel Facility received by CoBon needs to be verified in an accounting.

65. Starting in March 2000 and through December 2000, CoBon received at least \$397,416 as its share of the binder fees paid by the investor/owner of the PBS Synfuel Facility. These amounts received by CoBon qualified as profits on binder fees under the Consulting Agreement. The amount of binder fee profits from the PBS Synfuel Facility received by CoBon needs to be verified in an accounting.

66. In February 1998, CoBon received \$227,715 as its share of what were identified as "Initial Royalty Fees" paid by investors/owners of the Pace Synfuel Facilities. This amount received by CoBon qualified as profits on initial royalty fees under the Consulting Agreement. The amount of "Initial Royalty Fees" from the Pace Synfuel Facilities needs to be verified in an accounting.

N. **The Structure Of CoBon And The CoBon Business Enterprise**

67. Since 1996, CoBon has been under the control of four persons, Steven Nash, Robert Nash, W. Kelly Nash and Anton Tonc. Steven Nash has been the reported manager of CoBon for over ten years. On information and belief, CoBon, although organized as a Utah limited liability company, observes few company formalities and is partially managed or controlled by non-members W. Kelly Nash and Anton Tonc. Since at least 2001, CoBon has been undercapitalized; although CoBon has had positive cash flow of over \$65 million since 2000, the company has maintained a constant balance of only approximately \$100,000 over that time period, a financial position from which CoBon cannot reasonably expect to meet its obligations under the Consulting Agreement. On information and belief, CoBon does not pay dividends to its members. Proceeds received by CoBon from synfuel facilities, constituting "Proceeds" for purposes of the Consulting Agreement and profits on binder fees and initial royalty fees under the Consulting Agreement, which are CoBon's only revenue, are routinely siphoned from the company's accounts by, on information and belief, Steven Nash, Robert Nash, W. Kelly Nash and Anton Tonc, or persons or entities acting under their control, within a short time after CoBon receives them.

68. In December 1996, at least Steven Nash and Robert Nash formed each of the CoBon Synfuel Companies and named CoBon as manager of each of those companies. On information and

belief, the CoBon Synfuel Companies were formed, at least in part, as vehicles to receive proceeds constituting "Proceeds" for purposes of the Consulting Agreement and profits on binder fees and initial royalty fees under the Consulting Agreement, paid by synfuel facilities investors/owners. Since at least 2000, the CoBon Synfuel Companies have been used only to collect such proceeds.

69. On December 31, 1999, W. Kelly Nash and Anton Tonc became members of CoBon Synfuel #1, LLC and CoBon Synfuel #3, LLC. On information and belief, W. Kelly Nash and Anton Tonc are also members of CoBon Synfuel #2, LLC and CoBon Synfuel #4, LLC. On information and belief, W. Kelly Nash and Anton Tonc became members of the CoBon Synfuel Companies as a result of agreements with Steven Nash and Robert Nash that they would participate in CoBon's portion of the proceeds from synfuel facilities, which proceeds constitute "Proceeds" for purposes of the Consulting Agreement and profits on binder fees and initial royalty fees under the Consulting Agreement. Upon information and belief, based upon this agreement, W. Kelly Nash and Anton Tonc participated in the management and/or control of CoBon although they were not members of CoBon. On information and belief, W. Kelly Nash and Anton Tonc have received a substantial percentage of such proceeds (based upon their interests in receiving distributions from CoBon's share of proceeds from synfuel facilities and/or their membership in the CoBon Synfuel Companies).

70. On or about January 6, 2004, Robert Nash organized CE Ventures. As alleged, Robert Nash is the manager, registered agent, and, on information and belief, the sole member of CE Ventures.

71. On or about March 24, 2004, Steven Nash organized CB Ventures. As alleged, Steven Nash is the manager, registered agent, and, on information and belief, the sole member of CB Ventures.

72. On November 22, 2006, approximately one week after Alpine/AGTC served and filed the original Counterclaim in this action, CB Ventures and CE Ventures replaced Steven Nash and Robert Nash as the only members of CoBon. Upon information and belief, this was done in an attempt to further insulate Steven and Robert Nash from liability to Alpine/AGTC under the Consulting Agreement. Steven Nash remained the reported manager of CoBon. Steven Nash's, Robert Nash's, W. Kelly Nash's and Anton Tonc's control over CoBon was effectively unchanged by substituting CB Ventures and CE Ventures as members of CoBon.

73. The CoBon Synfuel Companies have been receiving proceeds that constitute "Proceeds" for purposes of the Consulting Agreement and profits on binder fees and initial royalty fees under the Consulting Agreement, either directly from the synfuel facilities or through Covol, since at least 2001. Since at least 2001, CoBon, Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, CE Ventures and the CoBon Synfuel Companies have engaged in a pattern of transactions whereby these proceeds constituting "Proceeds" for purposes of the Consulting Agreement and profits on binder fees and initial royalty fees under the Consulting Agreement are transferred from accounts controlled by the CoBon Synfuel Companies to accounts controlled by CoBon. Soon after these proceeds are received into the CoBon accounts, the proceeds are distributed, generally via check, leaving CoBon with a stable balance of approximately only \$100,000 in its accounts. The proceeds constituting "Proceeds" for purposes of the Consulting

Agreement and profits on binder fees and initial royalty fees under the Consulting Agreement are distributed from CoBon to, and put to personal use by, on information and belief, Steven Nash and Robert Nash (or used to fund CB Ventures and CE Ventures, which, as alleged, are directly controlled by Steven Nash and Robert Nash), as well as W. Kelly Nash and Anton Tonc, and/or to persons or entities controlled by them. The foregoing allegation is based on the following facts: (a) CoBon operates to the benefit the Nashes and Anton Tonc, and the Nashes and Anton Tonc were the intended recipients of CoBon's share of proceeds from synfuel facilities; (b) the Nashes and Anton Tonc are the members of CoBon and/or the CoBon Synfuel Companies; (c) the fact that CoBon's and the CoBon Synfuel Companies' business activities since at least 2001 has been limited to collecting and distributing proceeds from synfuel facilities; (d) the CoBon Synfuel Companies and CoBon have been receiving "Proceeds" and profits on binder fees and initial royalty fees from the synfuel facilities, both directly and indirectly, since no later than 2001; (e) the CoBon Synfuel Companies have transferred the majority of the "Proceeds" and profits on binder fees and initial royalty fees that they have received to CoBon; (f) CoBon never placed any "Proceeds," profits on binder fees or initial royalty fees in escrow as provided by the Consulting Agreement; (g) CoBon has distributed nearly all of the "Proceeds," profits on binder fees and initial royalty fees that it has received since 2001 to, upon information and belief, the Nashes and Anton Tonc, or persons or entities controlled by them; (h) the pattern of distributions by CoBon suggest that large amounts of the "Proceeds," profits on binder fees and initial royalty payments have been distributed upon a fractional share basis to, upon information and belief, the Nashes and Anton Tonc, or persons or entities controlled by them.

74. CoBon's pattern of receiving "Proceeds" and profits on binder royalty fees and initial royalty fees and then distributing them to, upon information and belief, the Nashes and Tonc, or persons or entities controlled by them, is demonstrated by the following series of transactions.

75. CoBon's Key Bank business basics checking account (Account No. 440421140621) began the year 2001 with a balance of \$5,286.10. Throughout 2001, approximately \$90,000 in "Proceeds," profits on binder fees and initial royalty fees were transferred into Account No. 440421140621, primarily from accounts controlled by the CoBon Synfuel Companies. Throughout 2001, CoBon made the following transfers, totaling approximately \$90,000, from Account No. 440421140621 to parties it has not disclosed. However, upon information and belief, the bulk, if not all, of the transfers were to the Nashes and/or Anton Tonc, and/or persons or entities under their control (based upon these individuals' interests in receiving distributions from CoBon's share of proceeds from synfuel facilities and/or their memberships in CoBon and/or the CoBon Synfuel Companies, and/or the pattern of the transfers and CoBon's limited business):

- a. On January 3, 2001, CoBon transferred \$10.00 out of its Key Bank business basics checking account by check (specifically check no. 2069).
- b. On January 4, 2001, CoBon transferred \$3,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2071).
- c. On January 8, 2001, CoBon transferred \$86.04 out of its Key Bank business basics checking account by check (specifically check no. 2070).
- d. On April 3, 2001, CoBon transferred \$160.00 out of its Key Bank business basics checking account by check (specifically check no. 2074).

e. On May 17, 2001, CoBon transferred \$168.26 out of its Key Bank business basics checking account by check (specifically check no. 2076).

f. On August 28, 2001, CoBon transferred \$170.44 out of its Key Bank business basics checking account by check (specifically check no. 2077).

g. On September 24, 2001, CoBon transferred \$21,830.00 out of its Key Bank business basics checking account by check (specifically check no. 2079).

h. On October 4, 2001, CoBon transferred \$26,460.00 out of its Key Bank business basics checking account by check (specifically check no. 2078).

i. On December 4, 2001, CoBon transferred \$20,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2083).

j. On December 5, 2001, CoBon transferred \$20,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2084).

k. On December 10, 2001, CoBon transferred \$129.38 out of its Key Bank business basics checking account by check (specifically check no. 2080).

l. On December 10, 2001, CoBon transferred \$12.40 out of its Key Bank business basics checking account by check (specifically check no. 2081).

m. On December 10, 2001, CoBon transferred \$10.00 out of its Key Bank business basics checking account by check (specifically check no. 2082).

76. CoBon's Key Bank business basics checking account (Account No. 440421140621) began the year 2002 with a balance of \$3,249.57. Throughout 2002, approximately \$8.5 million in "Proceeds" profits on binder fees and initial royalty fees were transferred into Account No.

440421140621, primarily from accounts controlled by the CoBon Synfuel Companies. Throughout 2002, CoBon made the following transfers, totaling approximately \$8.3 million, from Account No. 440421140621 to parties it has not disclosed. However, upon information and belief, the bulk, if not all, of the transfers were to the Nashes and/or Anton Tonc, and/or persons or entities under their control (based upon these individuals' interests in receiving distributions from CoBon's share of proceeds from synfuel facilities and/or their memberships in CoBon and/or the CoBon Synfuel Companies and/or the pattern of the transfers and CoBon's limited business):

- a. On January 3, 2002, CoBon transferred \$42.22 out of its Key Bank business basics checking account by check (specifically check no. 2085).
- b. On January 3, 2002, CoBon transferred \$75.00 out of its Key Bank business basics checking account by check (specifically check no. 2086).
- c. On January 7, 2002, CoBon transferred \$19,435.00 out of its Key Bank business basics checking account by check (specifically check no. 2089).
- d. On January 7, 2002, CoBon transferred \$115,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2092).
- e. On January 7, 2002, CoBon transferred \$1,085,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2093).
- f. On January 9, 2002, CoBon transferred \$26,020.00 out of its Key Bank business basics checking account by check (specifically check no. 2087).
- g. On January 11, 2002, CoBon transferred \$125,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2094).

h. On January 14, 2002, CoBon transferred \$5,980.00 out of its Key Bank business basics checking account by check (specifically check no. 2088).

i. On January 18, 2002, CoBon transferred \$288,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2097).

j. On January 22, 2002,. CoBon transferred \$64,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2095).

k. On January 22, 2002, CoBon transferred \$64,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2096).

l. On January 24, 2002, CoBon transferred \$350,640.00 out of its Key Bank business basics checking account by check (specifically check no. 2090).

m. On January 25, 2002, CoBon transferred \$15,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2100).

n. On January 28, 2002, CoBon transferred \$4,440.20 out of its Key Bank business basics checking account by check (specifically check no. 2101).

o. On February 15, 2002, CoBon transferred \$902,954.59 out of its Key Bank business basics checking account by check (specifically check no. 2102).

p. On March 4, 2002, CoBon transferred \$11,794.29 out of its Key Bank business basics checking account by check (specifically check no. 2104).

q. On March 5, 2002, CoBon transferred \$2,080.34 out of its Key Bank business basics checking account by check (specifically check no. 1).

r. On April 1, 2002, CoBon transferred \$1,092.17 out of its Key Bank business basics checking account by check (specifically check no. 2105).

s. On May 6, 2002, CoBon transferred \$1,040.17 out of its Key Bank business basics checking account by check (specifically check no. 2106).

t. On June 12, 2002, CoBon transferred \$1,040.17 out of its Key Bank business basics checking account by check (specifically check no. 2107).

u. On June 13, 2002, CoBon transferred \$215.71 out of its Key Bank business basics checking account by check (specifically check no. 2108).

v. On August 5, 2002, CoBon transferred \$2,080.34 out of its Key Bank business basics checking account by check (specifically check no. 2109).

w. On August 22, 2002, CoBon transferred \$87.29 out of its Key Bank business basics checking account by check (specifically check no. 2112).

x. On September 13, 2002, CoBon transferred \$662,932.50 out of its Key Bank business basics checking account by check (specifically check no. 2115).

y. On September 16, 2002, CoBon transferred \$1,040.17 out of its Key Bank business basics checking account by check (specifically check no. 2114).

z. On September 19, 2002, CoBon transferred \$28,450.00 out of its Key Bank business basics checking account by check (specifically check no. 2110).

aa. On September 23, 2002, CoBon transferred \$100,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2117).

bb. On September 23, 2002, CoBon transferred \$100,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2118).

cc. On September 25, 2002, CoBon transferred \$32,500.00 out of its Key Bank business basics checking account by check (specifically check no. 2111).

dd. On September 25, 2002, CoBon transferred \$1,092.17 out of its Key Bank business basics checking account by check (specifically check no. 2120).

ee. On September 27, 2002, CoBon transferred \$44.37 out of its Key Bank business basics checking account by check (specifically check no. 2122).

ff. On October 15, 2002, CoBon transferred \$675.00 out of its Key Bank business basics checking account by check (specifically check no. 2123).

gg. On October 15, 2002, CoBon transferred \$906.25 out of its Key Bank business basics checking account by check (specifically check no. 2124).

hh. On November 8, 2002, CoBon transferred \$20.00 out of its Key Bank business basics checking account by check (specifically check no. 2121).

ii. On November 8, 2002, CoBon transferred \$5,135.98 out of its Key Bank business basics checking account by check (specifically check no. 2127).

jj. On November 12, 2002, CoBon transferred \$87.57 out of its Key Bank business basics checking account by check (specifically check no. 2126).

kk. On November 12, 2002, CoBon transferred \$140.00 out of its Key Bank business basics checking account by check (specifically check no. 2128).

ll. On November 13, 2002, CoBon transferred \$1,040.17 out of its Key Bank business basics checking account by check (specifically check no. 2125).

mm. On November 22, 2002, CoBon transferred \$100,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2119).

nn. On December 16, 2002, CoBon transferred \$1,263,333.34 out of its Key Bank business basics checking account by check (specifically check no. 2130).

oo. On December 16, 2002, CoBon transferred \$650,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2132).

pp. On December 23, 2002, CoBon transferred \$450,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2133).

qq. On December 31, 2002, CoBon transferred \$1,220,277.49 out of its Key Bank business basics checking account by check (specifically check no. 2136).

77. CoBon's Key Bank business basics checking account (Account No. 440421140621) began the year 2003 with a balance of \$221,346.25. Throughout 2003, approximately \$3.3 million in "Proceeds" profits on binder fees and initial royalty fees were transferred into Account No. 440421140621, primarily from accounts controlled by the CoBon Synfuel Companies. Throughout 2003, CoBon made the following transfers, totaling approximately \$3.6 million, from Account No. 440421140621 to parties it has not disclosed. However, upon information and belief, the bulk, if not all, of the transfers were to the Nashes and/or Anton Tonc, and/or persons or entities under their control (based upon these individuals' interests in receiving distributions from CoBon's share of

proceeds from synfuel facilities and/or their memberships in CoBon and/or the CoBon Synfuel Companies and/or the pattern of the transfers and CoBon's limited business):

- a. On January 2, 2003, CoBon transferred \$188,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2146).
- b. On January 7, 2003, CoBon transferred \$2,080.34 out of its Key Bank business basics checking account by check (specifically check no. 2142).
- c. On January 7, 2003, CoBon transferred \$87.83 out of its Key Bank business basics checking account by check (specifically check no. 2143).
- d. On January 8, 2003, CoBon transferred \$200,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2134).
- e. On January 10, 2003, CoBon transferred \$1,582.97 out of its Key Bank business basics checking account by check (specifically check no. 2145).
- f. On January 13, 2003, CoBon transferred \$140,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2137).
- g. On January 13, 2003, CoBon transferred \$21,120.00 out of its Key Bank business basics checking account by check (specifically check no. 2140).
- h. On January 17, 2003, CoBon transferred \$37,500.00 out of its Key Bank business basics checking account by check (specifically check no. 2139).
- i. On January 17, 2003, CoBon transferred \$3,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2141).

j. On February 3, 2003, CoBon transferred \$28,500.00 out of its Key Bank business basics checking account by check (specifically check no. 2138).

k. On February 5, 2003, CoBon transferred \$1,628.86 out of its Key Bank business basics checking account by check (specifically check no. 2150).

l. On February 5, 2003, CoBon transferred \$93.26 out of its Key Bank business basics checking account by check (specifically check no. 2151).

m. On February 7, 2003, CoBon transferred \$67.82 out of its Key Bank business basics checking account by check (specifically check no. 2152).

n. On February 18, 2003, CoBon transferred \$480.47 out of its Key Bank business basics checking account by check (specifically check no. 2155).

o. On February 20, 2003, CoBon transferred \$111.27 out of its Key Bank business basics checking account by check (specifically check no. 2153).

p. On February 21, 2003, CoBon transferred \$2,132.34 out of its Key Bank business basics checking account by check (specifically check no. 2154).

q. On March 24, 2003, CoBon transferred \$298.43 out of its Key Bank business basics checking account by check (specifically check no. 2156).

r. On April 3, 2003, CoBon transferred \$140,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2147).

s. On April 4, 2003, CoBon transferred \$112.50 out of its Key Bank business basics checking account by check (specifically check no. 2158).

t. On April 7, 2003, CoBon transferred \$890.00 out of its Key Bank business basics checking account by check (specifically check no. 2159).

u. On April 7, 2003, CoBon transferred \$130.93 out of its Key Bank business basics checking account by check (specifically check no. 2160).

v. On April 9, 2003, CoBon transferred \$1,040.18 out of its Key Bank business basics checking account by check (specifically check no. 2157).

w. On April 28, 2003, CoBon transferred \$43.23 out of its Key Bank business basics checking account by check (specifically check no. 2161).

x. On April 30, 2003, CoBon transferred \$1,092.17 out of its Key Bank business basics checking account by check (specifically check no. 2162).

y. On May 2, 2003, CoBon transferred \$44,732.50 out of its Key Bank business basics checking account by check (specifically check no. 2163).

z. On May 6, 2003, CoBon transferred \$399.73 out of its Key Bank business basics checking account by check (specifically check no. 2164).

aa. On June 11, 2003, CoBon transferred \$79.95 out of its Key Bank business basics checking account by check (specifically check no. 2165).

bb. On June 13, 2003, CoBon transferred \$5,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2167).

cc. On June 13, 2003, CoBon transferred \$2,648.76 out of its Key Bank business basics checking account by check (specifically check no. 2168).

dd. On June 16, 2003, CoBon transferred \$1,040.17 out of its Key Bank business basics checking account by check (specifically check no. 2166).

ee. On June 16, 2003, CoBon transferred \$43.23 out of its Key Bank business basics checking account by check (specifically check no. 2169).

ff. On July 15, 2003, CoBon transferred \$1,040.17 out of its Key Bank business basics checking account by check (specifically check no. 2170).

gg. On July 16, 2003, CoBon transferred \$800,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2173).

hh. On July 17, 2003, CoBon transferred \$800,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2174).

ii. On July 21, 2003, CoBon transferred \$1,066,666.67 out of its Key Bank business basics checking account by check (specifically check no. 2175).

jj. On August 12, 2003, CoBon transferred \$533.50 out of its Key Bank business basics checking account by check (specifically check no. 2177).

kk. On August 13, 2003, CoBon transferred \$1,040.17 out of its Key Bank business basics checking account by check (specifically check no. 2176).

ll. On August 15, 2003, CoBon transferred \$12.00 out of its Key Bank business basics checking account by check (specifically check no. 2178).

mm. On October 6, 2003, CoBon transferred \$2,080.34 out of its Key Bank business basics checking account by check (specifically check no. 2179).

nn. On November 13, 2003, CoBon transferred \$179.55 out of its Key Bank business basics checking account by check (specifically check no. 2182).

oo. On November 17, 2003, CoBon transferred \$540.00 out of its Key Bank business basics checking account by check (specifically check no. 2180).

pp. On November 17, 2003, CoBon transferred \$1,092.18 out of its Key Bank business basics checking account by check (specifically check no. 2183).

qq. On November 20, 2003, CoBon transferred \$48.00 out of its Key Bank business basics checking account by check (specifically check no. 2181).

rr. On November 24, 2003, CoBon transferred \$25,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2171).

ss. On November 25, 2003, CoBon transferred \$30,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2172).

tt. On November 26, 2003, CoBon transferred \$1,040.17 out of its Key Bank business basics checking account by check (specifically check no. 2184).

uu. On December 9, 2003, CoBon transferred \$83.13 out of its Key Bank business basics checking account by check (specifically check no. 2185).

vv. On December 30, 2003, CoBon transferred \$108,125.00 out of its Key Bank business basics checking account by check (specifically check no. 2186).

ww. On December 30, 2003, CoBon transferred \$104.04 out of its Key Bank business basics checking account by check (specifically check no. 2189).

xx. On December 31, 2003, CoBon transferred \$1,040.17 out of its Key Bank business basics checking account by check (specifically check no. 2187).

yy. On December 31, 2003, CoBon transferred \$75.00 out of its Key Bank business basics checking account by check (specifically check no. 2190).

78. CoBon's Key Bank business basics checking account (Account No. 440421140621) began the year 2004 with a balance of \$139,678.74. Throughout 2004, approximately \$17.9 million in "Proceeds" profits on binder fees and initial royalty fees were transferred into Account No. 440421140621, primarily from accounts controlled by the CoBon Synfuel Companies. Throughout 2004, CoBon made the following transfers, totaling approximately \$16.9 million, from Account No. 440421140621 to parties it has not disclosed. However, upon information and belief, the bulk, if not all, the transfers were to the Nashes and/or Anton Tonc, and/or persons or entities under their control (based upon these individuals' interests in receiving distributions from CoBon's share of proceeds from synfuel facilities and/or their memberships in CoBon and/or the CoBon Synfuel Companies and/or the pattern of the transfers and CoBon's limited business):

a. On January 8, 2004, CoBon transferred \$200,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2191).

b. On January 8, 2004, CoBon transferred \$300,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2192).

c. On January 14, 2004, CoBon transferred \$400,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2193).

d. On January 20, 2004, CoBon transferred \$300,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2194).

e. On January 22, 2004, CoBon transferred \$4,987.00 out of its Key Bank business basics checking account by check (specifically check no. 2188).

f. On January 29, 2004, CoBon transferred \$100,00.00 out of its Key Bank business basics checking account by check (specifically check no. 2201).

g. On February 10, 2004, CoBon transferred \$600,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2199).

h. On February 13, 2004, CoBon transferred \$6,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2200).

i. On February 17, 2004, CoBon transferred \$33,345.00 out of its Key Bank business basics checking account by check (specifically check no. 2195).

j. On February 18, 2004, CoBon transferred \$133,333.00 out of its Key Bank business basics checking account by check (specifically check no. 2203).

k. On March 2, 2004, CoBon transferred \$2,080.34 out of its Key Bank business basics checking account by check (specifically check no. 2206).

l. On March 17, 2004, CoBon transferred \$100,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2204).

m. On March 24, 2004 CoBon transferred \$350,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2207).

n. On April 15, 2004, CoBon transferred \$1,092.18 out of its Key Bank business basics checking account by check (specifically check no. 2208).

o. On April 15, 2004, CoBon transferred \$220,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2210).

p. On April 15, 2004, CoBon transferred \$350,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2212).

q. On April 16, 2004, CoBon transferred \$570,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2209).

r. On April 19, 2004, CoBon transferred \$410,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2211).

s. On May 10, 2004, CoBon transferred \$199.65 out of its Key Bank business basics checking account by check (specifically check no. 2221).

t. On May 12, 2004, CoBon transferred \$1,040.17 out of its Key Bank business basics checking account by check (specifically check no. 2213).

u. On May 14, 2004, CoBon transferred \$5,734.88 out of its Key Bank business basics checking account by check (specifically check no. 2220).

v. On June 14, 2004, CoBon transferred \$1,040.17 out of its Key Bank business basics checking account by check (specifically check no. 2222).

w. On June 23, 2004, CoBon transferred \$150,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2215).

x. On June 23, 2004, CoBon transferred \$75,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2216).

y. On June 25, 2004, CoBon transferred \$350,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2223).

z. On June 28, 2004, CoBon transferred \$143.39 out of its Key Bank business basics checking account by check (specifically check no. 2214).

aa. On June 28, 2004, CoBon transferred \$2,650,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2225).

bb. On June 28, 2004, CoBon transferred \$2,650,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2226).

cc. On June 28, 2004, CoBon transferred \$3,534,000.00 out of its Key Bank business basics checking account by Fedwire withdrawal.

dd. On July 21, 2004, CoBon transferred \$12.00 out of its Key Bank business basics checking account by check (specifically check no. 2229).

ee. On July 27, 2004, CoBon transferred \$2,080.34 out of its Key Bank business basics checking account by check (specifically check no. 2230).

ff. On July 30, 2004, CoBon transferred \$75,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2217).

gg. On July 30, 2004, CoBon transferred \$400,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2224).

hh. On August 9, 2004, CoBon transferred \$310,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2231).

ii. On August 9, 2004, CoBon transferred \$310,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2232).

jj. On August 10, 2004, CoBon transferred \$413,333.33 out of its Key Bank business basics checking account by check (specifically check no. 2233).

kk. On August 11, 2004, CoBon transferred \$75,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2218).

ll. On August 12, 2004, CoBon transferred \$5,252.94 out of its Key Bank business basics checking account by check (specifically check no. 2237).

mm. On August 13, 2004, CoBon transferred \$157.14 out of its Key Bank business basics checking account by check (specifically check no. 2235).

nn. On August 16, 2004, CoBon transferred \$560.00 out of its Key Bank business basics checking account by check (specifically check no. 2234).

oo. On September 3, 2004, CoBon transferred \$390,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2242).

pp. On September 3, 2004, CoBon transferred \$390,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2243).

qq. On September 8, 2004, CoBon transferred \$936,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2241).

rr. On October 5, 2004, CoBon transferred \$75,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2245).

ss. On October 8, 2004, CoBon transferred \$43.80 out of its Key Bank business basics checking account by check (specifically check no. 2244).

tt. On December 28, 2004, CoBon transferred \$35,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2246).

uu. On December 28, 2004, CoBon transferred \$75.00 out of its Key Bank business basics checking account by check (specifically check no. 2250).

vv. On December 29, 2004, CoBon transferred \$75,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2254).

ww. On December 31, 2004, CoBon transferred \$185.24 out of its Key Bank business basics checking account by check (specifically check no. 2248).

79. CoBon's Key Bank business basics checking account (Account No. 440421140621) began the year 2005 with a balance of \$1,100,653.86. Throughout 2005, approximately \$11.5 million in "Proceeds" profits on binder fees and initial royalty fees were transferred into Account No. 440421140621, primarily from accounts controlled by the CoBon Synfuel Companies. Throughout 2005, CoBon made the following transfers, totaling approximately \$13 million, from Account No. 440421140621 to parties it has not disclosed. However, upon information and belief, the bulk, if not all, of the transfers were to the Nashes and/or Anton Tonc, and/or persons or entities under their control (based upon these individuals' interests in receiving distributions from CoBon's share of

proceeds from synfuel facilities and/or their memberships in CoBon and/or the CoBon Synfuel Companies and/or the pattern of the transfers and CoBon's limited business):

- a. On January 4, 2005, CoBon transferred \$1,625.00 out of its Key Bank business basics checking account by check (specifically check no. 2247).
- b. On January 4, 2005, CoBon transferred \$150,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2256).
- c. On January 6, 2005, CoBon transferred \$6,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2252).
- d. On January 10, 2005, CoBon transferred \$75,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2255).
- e. On January 21, 2005, CoBon transferred \$1,160.00 out of its Key Bank business basics checking account by check (specifically check no. 2251).
- f. On February 7, 2005, CoBon transferred \$200,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2262).
- g. On February 7, 2005, CoBon transferred \$600,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2265).
- h. On February 8, 2005, CoBon transferred \$200,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2263).
- i. On February 8, 2005, CoBon transferred \$600,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2266).

rr. On October 5, 2004, CoBon transferred \$75,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2245).

ss. On October 8, 2004, CoBon transferred \$43.80 out of its Key Bank business basics checking account by check (specifically check no. 2244).

tt. On December 28, 2004, CoBon transferred \$35,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2246).

uu. On December 28, 2004, CoBon transferred \$75.00 out of its Key Bank business basics checking account by check (specifically check no. 2250).

vv. On December 29, 2004, CoBon transferred \$75,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2254).

ww. On December 31, 2004, CoBon transferred \$185.24 out of its Key Bank business basics checking account by check (specifically check no. 2248).

79. CoBon's Key Bank business basics checking account (Account No. 440421140621) began the year 2005 with a balance of \$1,100,653.86. Throughout 2005, approximately \$11.5 million in "Proceeds" profits on binder fees and initial royalty fees were transferred into Account No. 440421140621, primarily from accounts controlled by the CoBon Synfuel Companies. Throughout 2005, CoBon made the following transfers, totaling approximately \$13 million, from Account No. 440421140621 to parties it has not disclosed. However, upon information and belief, the bulk, if not all, of the transfers were to the Nashes and/or Anton Tonc, and/or persons or entities under their control (based upon these individuals' interests in receiving distributions from CoBon's share of

proceeds from synfuel facilities and/or their memberships in CoBon and/or the CoBon Synfuel Companies and/or the pattern of the transfers and CoBon's limited business):

- a. On January 4, 2005, CoBon transferred \$1,625.00 out of its Key Bank business basics checking account by check (specifically check no. 2247).
- b. On January 4, 2005, CoBon transferred \$150,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2256).
- c. On January 6, 2005, CoBon transferred \$6,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2252).
- d. On January 10, 2005, CoBon transferred \$75,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2255).
- e. On January 21, 2005, CoBon transferred \$1,160.00 out of its Key Bank business basics checking account by check (specifically check no. 2251).
- f. On February 7, 2005, CoBon transferred \$200,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2262).
- g. On February 7, 2005, CoBon transferred \$600,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2265).
- h. On February 8, 2005, CoBon transferred \$200,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2263).
- i. On February 8, 2005, CoBon transferred \$600,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2266).

j. On February 10, 2005, CoBon transferred \$20,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2260).

k. On February 11, 2005, CoBon transferred \$266,666.67 out of its Key Bank business basics checking account by check (specifically check no. 2264).

l. On February 11, 2005, CoBon transferred \$800,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2267).

m. On February 18, 2005, CoBon transferred \$274.00 out of its Key Bank business basics checking account by check (specifically check no. 2268).

n. On February 23, 2005, CoBon transferred \$400,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2258).

o. On February 23, 2005, CoBon transferred \$100,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2259).

p. On February 24, 2005, CoBon transferred \$12,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2261).

q. On March 18, 2005, CoBon transferred \$37,500.00 out of its Key Bank business basics checking account by check (specifically check no. 2269).

r. On March 18, 2005, CoBon transferred \$900,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2274).

s. On March 18, 2005, CoBon transferred \$900,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2275).

t. On March 21, 2005, CoBon transferred \$1,200,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2276).

u. On March 22, 2005, CoBon transferred \$37,500.00 out of its Key Bank business basics checking account by check (specifically check no. 2271).

v. On March 22, 2005, CoBon transferred \$88.51 out of its Key Bank business basics checking account by check (specifically check no. 2273).

w. On March 25, 2005, CoBon transferred \$75,000.00 out of its Key Bank business basics checking account by check (specifically check no. 2272).

x. On April 11, 2005, CoBon transferred \$25,000.00 out of its Key Bank business free checking account by check (specifically check no. 998).

y. On April 28, 2005, CoBon transferred \$200,000.00 out of its Key Bank business free checking account by check (specifically check no. 3004).

z. On April 29, 2005, CoBon transferred \$200,000.00 out of its Key Bank business free checking account by check (specifically check no. 3005).

aa. On May 2, 2005, CoBon transferred \$8,429.43 out of its Key Bank free business checking account by check (specifically check no. 3007).

bb. On May 3, 2005, CoBon transferred \$94.50 out of its Key Bank free business checking account by check (specifically check no. 3001).

cc. On May 4, 2005, CoBon transferred \$266,666.67 out of its Key Bank free business checking account by check (specifically check no. 3006).

dd. On May 6, 2005, CoBon transferred \$600.00 out of its Key Bank free business checking account by check (specifically check no. 3002).

ee. On June 6, 2005, CoBon transferred \$40,000.00 out of its Key Bank free business checking account by check (specifically check no. 3008).

ff. On June 7, 2005, CoBon transferred \$675,000.00 out of its Key Bank free business checking account by check (specifically check no. 3013).

gg. On June 7, 2005, CoBon transferred \$675,000.00 out of its Key Bank free business checking account by check (specifically check no. 3014).

hh. On June 8, 2005, CoBon transferred \$900,000.00 out of its Key Bank free business checking account by check (specifically check no. 3015).

ii. On June 14, 2005, CoBon transferred \$300.00 out of its Key Bank free business checking account by check (specifically check no. 3016).

jj. On June 14, 2005, CoBon transferred \$44.48 out of its Key Bank free business checking account by check (specifically check no. 3017).

kk. On June 17, 2005, CoBon transferred \$3,550.00 out of its Key Bank free business checking account by check (specifically check no. 3009).

ll. On June 17, 2005, CoBon transferred \$16,180.00 out of its Key Bank free business checking account by check (specifically check no. 3010).

mm. On June 17, 2005, CoBon transferred \$37,500.00 out of its Key Bank free business checking account by check (specifically check no. 3011).

nn. On June 22, 2005, CoBon transferred \$10,000.00 out of its Key Bank free business checking account by check (specifically check no. 3018).

oo. On July 18, 2005, CoBon transferred \$330,000.00 out of its Key Bank free business checking account by check (specifically check no. 3025).

pp. On July 18, 2005, CoBon transferred \$330,000.00 out of its Key Bank free business checking account by check (specifically check no. 3026).

qq. On July 19, 2005, CoBon transferred \$37,500.00 out of its Key Bank free business checking account by check (specifically check no. 3020).

rr. On July 19, 2005, CoBon transferred \$440,000.00 out of its Key Bank free business checking account by check (specifically check no. 3027).

ss. On July 19, 2005, CoBon transferred \$238.00 out of its Key Bank free business checking account by check (specifically check no. 3028).

tt. On July 20, 2005, CoBon transferred \$37,500.00 out of its Key Bank free business checking account by check (specifically check no. 3019).

uu. On July 20, 2005, CoBon transferred \$75,000.00 out of its Key Bank free business checking account by check (specifically check no. 3022).

vv. On July 22, 2005, CoBon transferred \$238.00 out of its Key Bank free business checking account by check (specifically check no. 3023).

ww. On July 22, 2005, CoBon transferred \$44.39 out of its Key Bank free business checking account by check (specifically check no. 3024).

xx. On August 10, 2005, CoBon transferred \$810.13 out of its Key Bank free business checking account by check (specifically check no. 3029).

yy. On September 2, 2005, CoBon transferred \$40,000.00 out of its Key Bank free business checking account by check (specifically check no. 3030).

zz. On October 12, 2005, CoBon transferred \$22.00 out of its Key Bank free business checking account by check (specifically check no. 3031).

aaa. On October 12, 2005, CoBon transferred \$200,000.00 out of its Key Bank free business checking account by check (specifically check no. 3032).

bbb. On October 17, 2005, CoBon transferred \$500,000.00 out of its Key Bank free business checking account by check (specifically check no. 3038).

ccc. On October 17, 2005, CoBon transferred \$500,000.00 out of its Key Bank free business checking account by check (specifically check no. 3039).

ddd. On October 18, 2005, CoBon transferred \$666,667.00 out of its Key Bank free business checking account by check (specifically check no. 3037).

eee. On October 19, 2005, CoBon transferred \$37,500.00 out of its Key Bank free business checking account by check (specifically check no. 3033).

fff. On October 19, 2005, CoBon transferred \$37,500.00 out of its Key Bank free business checking account by check (specifically check no. 3034).

ggg. On October 19, 2005, CoBon transferred \$37,500.00 out of its Key Bank free business checking account by check (specifically check no. 3035).

hhh. On October 19, 2005, CoBon transferred \$75,000.00 out of its Key Bank free business checking account by check (specifically check no. 3036).

iii. On December 16, 2005, CoBon transferred \$75,000.00 out of its Key Bank free business checking account by check (specifically check no. 3040).

jjj. On December 23, 2005, CoBon transferred \$1,350.00 out of its Key Bank free business checking account by check (specifically check no. 3044).

kkk. On December 27, 2005, CoBon transferred \$227.66 out of its Key Bank free business checking account by check (specifically check no. 3041).

lll. On December 27, 2005, CoBon transferred \$75.00 out of its Key Bank free business checking account by check (specifically check no. 3042).

80. CoBon's Key Bank business free checking account (Account No. 440421129352) began the year 2006 with a balance of \$202,461.25. Throughout 2006, approximately \$8.3 million in "Proceeds" profits on binder fees and initial royalty fees were transferred into Account No. 440421129352, primarily from accounts controlled by the CoBon Synfuel Companies. Throughout 2006, CoBon made the following transfers, totaling approximately \$8.5 million, from Account No. 440421129352 to parties it has not disclosed. However, upon information and belief, the bulk, if not all, of the transfers were to the Nashes and/or Anton Tonc, and/or persons or entities under their control (based upon these individuals' interests in receiving distributions from CoBon's share of proceeds from synfuel facilities and/or their memberships in CoBon and/or the CoBon Synfuel Companies and/or the pattern of the transfers and CoBon's limited business):

- a. On January 4, 2006 CoBon transferred \$6,274.77 out of its Key Bank free business checking account by check (specifically check no. 3043).
- b. On January 6, 2006, CoBon transferred \$180,000.00 out of its Key Bank free business checking account by check (specifically check no. 3054).
- c. On January 9, 2006, CoBon transferred \$37,500.00 out of its Key Bank free business checking account by check (specifically check no. 3047).
- d. On January 9, 2006, CoBon transferred \$200,000.00 out of its Key Bank free business checking account by check (specifically check no. 3050).
- e. On January 9, 2006, CoBon transferred \$47.06 out of its Key Bank free business checking account by check (specifically check no. 3052).
- f. On January 9, 2006, CoBon transferred \$31,780.02 out of its Key Bank free business checking account by check (specifically check no. 3053).
- g. On January 9, 2006, CoBon transferred \$240,000.00 out of its Key Bank free business checking account by check (specifically check no. 3056).
- h. On January 11, 2006, CoBon transferred \$37,500.00 out of its Key Bank free business checking account by check (specifically check no. 3048).
- i. On January 13, 2006, CoBon transferred \$180,000.00 out of its Key Bank free business checking account by check (specifically check no. 3055).
- j. On January 17, 2006, CoBon transferred \$75,000.00 out of its Key Bank free business checking account by check (specifically check no. 3045).

k. On January 17, 2006, CoBon transferred \$37,500.00 out of its Key Bank free business checking account by check (specifically check no. 3046).

l. On January 20, 2006, CoBon transferred \$675,000.00 out of its Key Bank free business checking account by check (specifically check no. 3062).

m. On January 23, 2006, CoBon transferred \$675,000.00 out of its Key Bank free business checking account by check (specifically check no. 3063).

n. On January 23, 2006, CoBon transferred \$900,000.00 out of its Key Bank free business checking account by check (specifically check no. 3064).

o. On January 24, 2006, CoBon transferred \$6,000.00 out of its Key Bank free business checking account by check (specifically check no. 3051).

p. On March 14, 2006, CoBon transferred \$300.00 out of its Key Bank free business checking account by check (specifically check no. 3057).

q. On March 14, 2006, CoBon transferred \$300.00 out of its Key Bank free business checking account by check (specifically check no. 3058).

r. On March 14, 2006, CoBon transferred \$400.00 out of its Key Bank free business checking account by check (specifically check no. 3059).

s. On March 17, 2006, CoBon transferred \$300,000.00 out of its Key Bank free business checking account by check (specifically check no. 3065).

t. On March 17, 2006, CoBon transferred \$300,000.00 out of its Key Bank free business checking account by check (specifically check no. 3066).

u. On March 21, 2006, CoBon transferred \$88.19 out of its Key Bank free business checking account by check (specifically check no. 3068).

v. On March 28, 2006, CoBon transferred \$400,000.00 out of its Key Bank free business checking account by check (specifically check no. 3067).

w. On March 29, 2006, CoBon transferred \$435,000.00 out of its Key Bank free business checking account by check (specifically check no. 3069).

x. On March 29, 2006, CoBon transferred \$435,000.00 out of its Key Bank free business checking account by check (specifically check no. 3070).

z. On April 5, 2006, CoBon transferred \$580,000.00 out of its Key Bank free business checking account by check (specifically check no. 3071).

aa. On April 24, 2006, CoBon transferred \$405,000.00 out of its Key Bank free business checking account by check (specifically check no. 3072).

bb. On April 25, 2006, CoBon transferred \$405,000.00 out of its Key Bank free business checking account by check (specifically check no. 3073).

cc. On April 27, 2006, CoBon transferred \$44.33 out of its Key Bank free business checking account by check (specifically check no. 3075).

dd. On May 1, 2006, CoBon transferred \$540,000.00 out of its Key Bank free business checking account by check (specifically check no. 3074).

ee. On July 19, 2006, CoBon transferred \$20,000.00 out of its Key Bank free business checking account by check (specifically check no. 3076).

ff. On August 4, 2006, CoBon transferred \$300,000.00 out of its Key Bank free business checking account by check (specifically check no. 3077).

gg. On August 4, 2006, CoBon transferred \$200,000.00 out of its Key Bank free business checking account by check (specifically check no. 3078).

hh. On August 15, 2006, CoBon transferred \$289.00 out of its Key Bank free business checking account by check (specifically check no. 3080).

ii. On August 17, 2006, CoBon transferred \$182.28 out of its Key Bank free business checking account by check (specifically check no. 3079).

jj. On October 18, 2006, CoBon withdrew \$4,000.00 from its Key Bank free business checking account.

kk. On October 19, 2006, CoBon transferred \$225,000.00 out of its Key Bank free business checking account by check (specifically check no. 3082).

ll. On October 19, 2006, CoBon transferred \$30,000.00 out of its Key Bank free business checking account by check (specifically check no. 3086).

mm. On October 19, 2006, CoBon transferred \$30,000.00 out of its Key Bank free business checking account by check (specifically check no. 3087).

nn. On October 19, 2006, CoBon transferred \$40,000.00 out of its Key Bank free business checking account by check (specifically check no. 3089).

oo. On October 20, 2006, CoBon transferred \$112,500.00 out of its Key Bank free business checking account by check (specifically check no. 3083).

pp. On October 20, 2006, CoBon transferred \$112,500.00 out of its Key Bank free business checking account by check (specifically check no. 3085).

qq. On October 20, 2006, CoBon transferred \$40,000.00 out of its Key Bank free business checking account by check (specifically check no. 3088).

rr. On October 23, 2006, CoBon transferred \$112,500.00 out of its Key Bank free business checking account by check (specifically check no. 3084).

ss. On October 27, 2006, CoBon transferred \$88.94 out of its Key Bank free business checking account by check (specifically check no. 3090).

tt. On November 22, 2006, CoBon transferred \$85.00 out of its Key Bank free business checking account by check (specifically check no. 3093).

uu. On November 22, 2006, CoBon transferred \$80,000.00 out of its Key Bank free business checking account by check (specifically check no. 3099).

vv. On November 22, 2006, CoBon transferred \$80,000.00 out of its Key Bank free business checking account by check (specifically check no. 3100).

ww. On November 24, 2006, CoBon transferred \$106,666.67 out of its Key Bank free business checking account by check (specifically check no. 3098).

xx. On November 27, 2006, CoBon transferred \$134.13 out of its Key Bank free business checking account by check (specifically check no. 3095).

yy. On November 28, 2006, CoBon transferred \$6,000.00 out of its Key Bank free business checking account by check (specifically check no. 3096).

zz. On November 29, 2006, CoBon transferred \$75.00 out of its Key Bank free business checking account by check (specifically check no. 3094).

aaa. On December 26, 200, CoBon transferred \$5,000.00 out of its Key Bank free business checking account by check (specifically check no. 3097).

O. CoBon Acknowledged Its Obligation To Pay The Contract Price; And CoBon Acknowledged That Its Proceeds For Tax Credits From The PBS And Pace Projects Were “Proceeds” Under The Consulting Agreement

81. After entering into the Consulting Agreement and prior to November 2002, CoBon consistently demonstrated to Alpine/AGTC an intention that Alpine/AGTC would be paid under the Consulting Agreement from proceeds for tax credits received by CoBon relating to the PBS, Pace and Robena Synfuel Facilities. During this time, CoBon never notified Alpine/AGTC that they were not entitled to be paid under the Consulting Agreement from proceeds that CoBon received from either the Pace, Robena or PBS Synfuel Facilities.

82. Prior to November 2002, CoBon partially performed the Consulting Agreement by distributing to Alpine and AGTC a portion of the “Consulting Fees” that were and remain due and owing under the Consulting Agreement.

83. In May 2000, CoBon sent advance payments of the “Consulting Fee,” \$10,000 to each of Alpine/AGTC, with a cover letter stating that the payments were “an advance payment for anticipated Pace and/or PBS tax credits payments due to [Alpine/AGTC].”

84. In August, November and December 2001, CoBon made seven payments under the Consulting Agreement to Alpine/AGTC, totaling \$418,000, based upon “Contingent Payments” or “Earned Royalties” received from the PBS and/or Pace Projects synfuel facilities. The payments

were designated by CoBon as “Consulting Fee Advance,” “Advance Consulting Fee,” “Advance License Fee,” or “Advance Tax Credit Payment.” These payments were “advances” because they were only approximations by CoBon of “Consulting Fees” that were then or soon to be due, and that an accounting had to occur to determine the exact amounts that were due to Alpine/AGTC. During the time that it made the distributions, CoBon acknowledged that it would be or was receiving “Proceeds” for purposes of the Consulting Agreement, including the “Earned Royalties” it received through Covol from the Pace Synfuel Facilities. During the time it made the distributions, CoBon never claimed that: (a) Alpine or AGTC had not performed or were not entitled to be paid consulting fees or a percentage of binder fee or initial royalty profits under the Consulting Agreement; or (b) CoBon was not receiving or would not be receiving “Proceeds” for purposes of the Consulting Agreement.

85. In July 2002, Alpine/AGTC met with CoBon to discuss what “Consulting Fees” were due at that time. At the meeting, CoBon supplied Alpine/AGTC with a document titled “Contractual Entitlement in Accordance with Consulting Agreement Dated 12/05/96 and Allocation of CoBon License Agreement Capacity.” The document was an accounting by CoBon of “Consulting Fees” it considered due to Alpine/AGTC at that time under the Consulting Agreement. At that time, CoBon did not assert that: (a) Alpine/AGTC had not performed or were not entitled to be paid consulting fees or a percentage of binder fee profits under the Consulting Agreement; or (b) CoBon was not receiving or would not be receiving “Proceeds” under the Consulting Agreement.

86. The first page of the July 2002 accounting document provided to Alpine/AGTC by CoBon, after the cover sheet, was titled “Payments Due AGTC/Alpine Based on PBS/Somerset

Production.” That page listed CoBon’s “Earned Royalty Payments” and “Contingent Payments” from the PBS Project synfuel facility in 1999, 2000, and 2001 as included in the basis for “payments due AGTC/Alpine based on PBS/Somerset production.”

87. The second page of the July 2002 accounting document provided to Alpine/AGTC by CoBon, after the cover sheet, was titled “AGTC/Alpine Earned Royalty & Contingent Payment Schedule from PBS/PP&L - 2002 Production.” That page included CoBon’s “Contingent Payments” and “Earned Royalty” payments from the PBS Project synfuel facility as a basis for calculating payments due to Alpine/AGTC under the Consulting Agreement.

88. The third page of the July 2002 accounting document provided to Alpine/AGTC by CoBon, after the cover sheet, was titled “Consulting Agreement Distribution Summary,” and had a table titled “Summary of Payments Received By CoBon for Distribution to AGTC/Alpine.” In the “Summary of Payments Received By CoBon for Distribution to AGTC/Alpine,” CoBon listed “Earned Royalty” payments from the Pace Project synfuel facilities, “Contingent Payments” from the PBS Project synfuel facility, and “Earned Royalty” payments from the PBS Project synfuel facility.

89. In the July 2002 accounting document provided to Alpine/AGTC by CoBon, after the cover sheet, CoBon accounted for the “Consulting Fees” due to Alpine/AGTC at that time by calculating “Proceeds” based upon proceeds from only 1.5 million tons per year of licensed capacity, instead of all of the capacity that CoBon had ended up providing to the Pace, PBS and Robena Synfuel Facilities, and by subtracting from “Proceeds” not only the \$700,000 in expenses expressly

set aside for it under the Consulting Agreement, but also all of what it claimed to be all of its expenses related to the development of the Pace, PBS and Robena Synfuel Facilities.

P. CoBon Breached Its Obligation to Pay Alpine/AGTC The “Consulting Fee” And To Distribute Thirty Percent Of Its Binder Fee And Initial Royalty Fee Profits To Alpine/AGTC

90. In November 2002, CoBon first denied it was obligated to pay Alpine/AGTC any “Consulting Fees” or a percentage of initial royalty fee and binder fee profits under the Consulting Agreement. Since November 2002, CoBon has denied any obligation to pay “Consulting Fees” and a percentage of binder fee and initial royalty fee profits under the Consulting Agreement, and now claims that its prior distributions of a portion of the “Consulting Fees” that were and are due and owing were either loans, expense reimbursements to which Alpine/AGTC were not entitled, or “Consulting Fee” advances that were not earned and, thus, that Alpine/AGTC must pay back the prior distributions.

91. In November 2002, when CoBon first completely disavowed any obligation to pay Alpine and AGTC any “Consulting Fees” or a percentage of binder fee or initial royalty fee profits under the Consulting Agreement, CoBon took the position that the Consulting Agreement was unenforceable, only as a result of an alleged change in the tax law. In the First Amended Complaint initiating this action, CoBon seeks a declaratory judgment declaring that Alpine and AGTC are not entitled to receive any “Consulting Fees” or other consideration under the Consulting Agreement, as a result of Alpine and AGTC’s alleged non-performance under the Consulting Agreement and/or the alleged non-occurrence or non-satisfaction of unspecified conditions precedent to CoBon’s obligations to pay “Consulting Fees” under the Consulting Agreement. CoBon does so without basis

in law or fact. CoBon also claims that the distributions it made to Alpine and AGTC were either loans, expense reimbursements within the scope of the Consulting Agreement, or unearned consulting fee advances under the Consulting Agreement that are subject to an accounting and repayment, without any basis in law or fact.

92. CoBon never held any proceeds for tax credits that it received in an escrow account for the benefit of Alpine/AGTC. The only payments CoBon made to Alpine/AGTC under the Consulting Agreement were the nine payments totaling \$438,000 in "Consulting Fees" paid in May 2000 and August, November and December 2001, and \$65,000 in advances paid between August 1991 and January 1998. This did not constitute full or even substantial performance of CoBon's obligation to pay the "Consulting Fee" portion of the contract price under the Consulting Agreement, or performance of CoBon's obligation to distribute thirty percent (30%) of its binder fee and initial royalty fee profits to Alpine/AGTC under the Consulting Agreement. CoBon has materially breached these obligations.

93. AGTC and Alpine are entitled to substantial "Consulting Fees" as a result of CoBon's receipt of millions of dollars of "Proceeds" for purposes of the Consulting Agreement. CoBon has failed to pay the consulting fees that are due and owing since at least September 2001 and denies any obligation to pay any consulting fees to Alpine and AGTC under the Consulting Agreement. CoBon's distribution of "Consulting Fee" advances and payments prior to January 1, 2002 was not full performance of CoBon's obligation to pay "Consulting Fees" during that time, and CoBon has not made any distributions of "Consulting Fees" that are due and owing after December 31, 2001. Alpine and AGTC also are entitled to "Consulting Fees" as a result of CoBon's right to receive

substantial “Proceeds” in the future. CoBon denies any future or continuing obligation to distribute to AGTC and Alpine any consulting fees under the Consulting Agreement. CoBon has never distributed to Alpine and AGTC their percentage share of the binder fee profits and initial royalty fee profits obtained by CoBon to which Alpine and AGTC are entitled under the Consulting Agreement and denies any obligation to make that distribution.

94. CoBon has failed to pay Alpine and AGTC the “Consulting Fees,” binder fee profits, and initial royalty fee profits to which Alpine and AGTC are and will be entitled under the Consulting Agreement, and denies any obligation to pay “Consulting Fees” and a percentage of binder fee and initial royalty fee profits under the Consulting Agreement, even though CoBon has benefitted from Alpine/AGTC’s consulting services provided under the Consulting Agreement and has received and continues to receive millions of dollars of “Proceeds,” binder fee profits, and initial royalty fee profits under the Consulting Agreement.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment and Supplemental Relief Pursuant to Utah Code Ann. § 78B-6-401, *et seq.*)

95. Alpine/AGTC incorporate and reallege the allegations of paragraphs 1 through and including 94 as if fully set forth herein.

96. An actual case and controversy exists between Alpine/AGTC and CoBon with regard to the parties’ rights and obligations under the Consulting Agreement.

97. Alpine/AGTC allege that they are entitled to a current distribution of “Consulting Fees” and a percentage of binder fee and initial royalty fee profits under the Consulting Agreement,

and that they are entitled to future distributions of “Consulting Fees” and a percentage of binder fee profits under the Consulting Agreement.

98. As evidenced by its First Amended Complaint, CoBon claims that Alpine/AGTC are not entitled to any current or future distributions of “Consulting Fees” or percentage of binder fee or initial royalty fees profits under the Consulting Agreement.

99. Alpine/AGTC are entitled to a declaratory judgment against CoBon: (a) confirming that Alpine/AGTC are entitled to a current distribution of “Consulting Fees” and a percentage of binder fee and initial royalty fee profits under the Consulting Agreement; (b) establishing the amount of the current “Consulting Fees” and percentage of binder fee and initial royalty fee profits to which AGTC/Alpine are entitled, plus interest; (c) confirming that Alpine/AGTC are entitled to future distributions of “Consulting Fees” and a percentage of binder fee profits under the Consulting Agreement, in amounts to be determined in the future based upon periodic and regular accountings that apply the terms of the Consulting Agreement; and (d) otherwise determining the rights and obligations of the parties under the Consulting Agreement.

100. Upon information and belief, CoBon will continue to deny that Alpine/AGTC are entitled to current and future distributions of consulting fees and a percentage of binder fee profits under the Consulting Agreement, unless the declaratory judgment requested herein is granted.

WHEREFORE, Alpine/AGTC pray judgment:

a. Declaring: (i) Alpine/AGTC are entitled to a current distribution of “Consulting Fees” and a percentage of binder fee and initial royalty fee profits under the Consulting Agreement and the amount of the distribution plus interest; (ii) Alpine/AGTC are entitled to future distributions

of “Consulting Fees” and percentage of binder fee profits under the Consulting Agreement, in amounts to be determined upon regular and periodic accountings that apply the terms of the Consulting Agreement; and (iii) otherwise declaring the parties’ rights and obligations under the Consulting Agreement;

b. For injunctive relief, including a temporary restraining order or preliminary injunction, preventing CoBon from continuing to deny Alpine/AGTC’s entitlement to distributions of “Consulting Fees” and a percentage of binder fee and initial royalty fee profits thereunder;

c. For interest, costs, and attorneys’ fees; and

d. For such other and further relief to which they may prove to be entitled and/or the Court deems is just and proper.

SECOND CLAIM FOR RELIEF

(Breach of Contract for Damages and Declaratory Relief)

101. AGTC/Alpine incorporate and reallege the allegations of paragraphs 1 through and including 100 as if fully set forth herein.

102. CoBon has materially breached the Consulting Agreement. These breaches include:

a. Failing to distribute to AGTC/Alpine in full the “Consulting Fees” and percentage of binder fee and initial royalty fee profits that AGTC and Alpine are entitled to receive to date under the Consulting Agreement;

b. Failing to place the first two years of its proceeds for tax credits from the PBS and Pace Synfuel Facilities in an escrow account as required under the Consulting Agreement and/or distributing such proceeds to CoBon without making a distribution to Alpine/AGTC;

c. Repudiating any obligation to distribute to Alpine/AGTC the “Consulting Fees” and a percentage of the binder fee and initial royalty fee profits that Alpine/AGTC currently are entitled to and will be entitled to receive in the future under the Consulting Agreement; and

d. Breaching the covenant of good faith and fair dealing that is implied in the Consulting Agreement by, among other actions: (i) knowingly attempting to avoid its obligation of distribution to Alpine/AGTC of the “Consulting Fees” and percentage of binder fee and initial royalty fee profits which Alpine/AGTC are and will be entitled to receive under the Consulting Agreement; (ii) repudiating the Consulting Agreement and Alpine/AGTC’s right to receive consideration under the Consulting Agreement without basis in law or fact and after acknowledging Alpine/AGTC’s performance and right to be paid “Consulting Fees” under the Consulting Agreement, CoBon’s right to receive and/or its receipt of “Proceeds” for purposes of the Consulting Agreement, and CoBon’s obligation to pay “Consulting Fees” based thereon; (iii) fabricating reasons why Alpine/AGTC allegedly are not entitled to the distribution of “Consulting Fees” under the Consulting Agreement; and (iv) providing a false accounting.

103. CoBon’s actions constitute a material breach and a repudiation of the Consulting Agreement.

104. Based upon CoBon’s material breach and repudiation of the Consulting Agreement, Alpine/AGTC have suffered and are entitled to damages in an amount to be proven at trial as to the “Consulting Fees” and the percentage of binder fee and initial royalty fee profits to which they currently are entitled to receive under the Consulting Agreement. Alpine/AGTC are entitled to a

complete accounting as to the “Consulting Fees” and binder fee and initial royalty fee profits that they are owed under the Consulting Agreement.

105. Based upon CoBon’s material breach and repudiation of the Consulting Agreement, Alpine/AGTC are entitled to a declaratory judgment by the Court that they are entitled to distribution of “Consulting Fees” equal to thirty percent (30%) of CoBon’s prospective “Proceeds” for purposes of the Consulting Agreement, and thirty percent of (30%) CoBon’s binder fee profits to be received in the future under the Consulting Agreement, in amounts to be determined under periodic and regular full and fair accountings that apply the terms of the Consulting Agreement.

WHEREFORE, AGTC and Alpine pray judgment:

- a. For damages in an amount to be proven at trial for the “Consulting Fees” and percentage of binder fee and initial royalty fee profits already due and owing;
- b. For a declaratory judgment that Alpine and AGTC are entitled to a future distribution of “Consulting Fees” and a percentage of binder fee profits under the Consulting Agreement, in an amount to be determined upon full and fair accountings;
- c. For interest;
- d. For attorneys’ fees and costs; and
- e. For all such other and further relief to which they may prove to be entitled and/or the Court deems is just and proper.

THIRD CLAIM FOR RELIEF

(Unjust Enrichment)

106. Alpine/AGTC incorporate and reallege the allegations of paragraphs 1 through and including 105 as if fully set forth herein.

107. Alpine/AGTC conferred upon CoBon a substantial benefit by reason of their performance of the Consulting Agreement, whereby Alpine/AGTC made available to CoBon the opportunity to participate in the PBS, Pace and Consol Projects, as well as other synfuel projects, and substantially assisted and supported CoBon regarding the development of the Pace, PBS and Robena Synfuel Facilities.

108. CoBon both appreciated and has knowledge of the benefit conferred upon it by Alpine/AGTC by reason of their performance of the Consulting Agreement, when Alpine/AGTC made available to CoBon the opportunity to participate in the PBS, Pace and Consol Projects, as well as other synfuel projects, and substantially assisted and supported CoBon regarding the development of the Pace, PBS and Robena Synfuel Facilities.

109. CoBon knowingly accepted the benefit conferred upon it by reason of AGTC and Alpine's performance under the Consulting Agreement and proceeded to participate in the development of the PBS, Pace and Robena Synfuel Facilities, the sale of the PBS and Robena Synfuel Facilities, and contracted with Covol for the right to participate in the distribution of proceeds from the Pace Synfuel Facilities, and derives substantial value from such development, sales, and contracting. But for Alpine/AGTC's conferring upon CoBon the benefit of their

performance of the Consulting Agreement, the PBS, Pace and Robena Synfuel Facilities would not have been developed and CoBon would not have derived substantial value from these facilities.

110. Despite being conferred a benefit by reason of Alpine/AGTC's performance under the Consulting Agreement and deriving substantial value therefrom, CoBon refuses to pay for the value of Alpine/AGTC's services.

111. Therefore, so as to prevent an unjust enrichment, CoBon is liable to Alpine/AGTC for the value to CoBon of the benefit conferred upon it by Alpine/AGTC, which is the value to CoBon of the PBS, Pace and Robena Synfuel Facilities, which would not have been developed but for the benefit conferred upon CoBon by Alpine/AGTC by reason of their performance of the Consulting Agreement.

WHEREFORE, Alpine/AGTC pray judgment:

- a. For damages equivalent to the value to CoBon of the benefit conferred upon it by Alpine/AGTC by reason of their performance of the Consulting Agreement;
- b. For interest;
- c. For attorneys' fees and costs; and
- d. For all such other and further relief to which they may prove to be entitled and/or which the Court deems just and proper.

FOURTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty)

112. Alpine/AGTC incorporate and reallege the allegations of paragraph 1 through and including 111 as if fully set forth herein.

113. By reason of and according to the express terms of the Consulting Agreement, CoBon held and holds Alpine/AGTC's thirty percent (30%) interest in the "Proceeds" for purposes of the Consulting Agreement and binder fee and initial royalty fee profits in trust for the benefit of Alpine/AGTC. As a result, CoBon owes fiduciary duties to Alpine/AGTC with regard to their thirty percent (30%) interest in the "Proceeds" and profits on binder fees and initial royalty fees.

114. CoBon has breached its fiduciary duties owing to Alpine/AGTC. CoBon's breaches include:

- a. Failing to properly account for Alpine/AGTC's thirty percent (30%) interest in the "Proceeds" for purposes of the Consulting Agreement, and profits on binder fees and initial royalty fees; and
- b. Denying any obligation to distribute to Alpine/AGTC their thirty percent (30%) interest in the "Proceeds" and profits on binder fees and initial royalty fees and, thereby, converting the thirty percent (30%) interest.

115. Alpine/AGTC have been damaged in an amount to be proven at trial as a direct and proximate result of CoBon's breaches of its fiduciary duties to Alpine/AGTC.

116. CoBon's conduct as alleged herein has been willful and malicious or with knowing or reckless indifference towards, and disregard of, the rights of Alpine/AGTC, so that Alpine/AGTC are entitled to punitive damages.

WHEREFORE, Alpine/AGTC pray judgment:

- a. For damages in an amount to be proven at trial;
- b. For punitive damages;

c. For attorneys' fees and costs; and

d. For such other and further relief to which they may prove to be entitled and/or which

the Court deems proper and just.

FIFTH CLAIM FOR RELIEF

(Alter Ego Liability against CoBon, Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and CE Ventures)

117. Alpine/AGTC incorporate and reallege the allegations of paragraph 1 through and including 116 as if fully set forth herein.

118. CoBon is a Utah limited liability company. Steven Nash is the sole reported manager of CoBon and has been since CoBon was created. Between 1996 and November 22, 2006, Steven Nash and Robert Nash were the only reported members of CoBon. Since November 22, 2006, CB Ventures and CE Ventures, both Utah limited liability companies, have been the only reported members of CoBon. However, W. Kelly Nash and Anton Tonc also exert control over and participate in the management and affairs of CoBon. On information and belief, Steven Nash is the sole member of and has exclusive control over CB Ventures. On information and belief, Robert Nash is the sole member of and has exclusive control over CE Ventures.

119. CoBon, and CB Ventures and CE Ventures, as members of CoBon, are mere shells and form a naked framework which Steven Nash, Robert Nash, W. Kelly Nash and Anton Tonc have and now use as a mere conduit for their ideas, business, property, and affairs. Since at least 2000, the sole use of CoBon has been to receive payments constituting "Proceeds" for purposes of the Consulting Agreement and profits on binder fees and initial royalty fees under the Consulting

Agreement, and distribute the “Proceeds” and profits, on information and belief, to Steven Nash, Robert Nash, W. Kelly Nash and Anton Tonc, and/or persons or entities under their control, for their personal use. The effect of the distributions has been to leave CoBon in an undercapitalized state since 2001.

120. The unity of interest and ownership between Steven Nash, Robert Nash, W. Kelly Nash and/or Anton Tonc, on the one part, and CoBon, on the other part, is such that the separate personalities of the individuals, on the one part, and CoBon, on the other part, do not exist. As alleged, Steven Nash, Robert Nash, W. Kelly Nash and Anton Tonc have controlled and/or managed CoBon since 1996.

121. As alleged, CB Ventures replaced Steven Nash as a member of CoBon on November 22, 2006, approximately one month after plaintiffs filed their Complaint in this action. Upon information and belief, such was done in an attempt to further insulate Steven Nash from personal liability to Alpine/AGTC under the Consulting Agreement. Since November 22, 2006, the unity of interest between CB Ventures and CoBon has been such that the separate personalities of the two do not exist. Steven Nash’s control over CoBon has been exercised both personally and through the entity CB Ventures. On information and belief, neither Steven Nash nor CB Ventures has observed or does observe entity formalities relative to CoBon. On information and belief, Steven Nash exercises exclusive control over CB Ventures and there are no entity formalities observed by Steven Nash relative to CB Ventures.

122. As alleged, CE Ventures replaced Robert Nash as a member of CoBon on November 22, 2006, approximately one month after plaintiffs filed their Complaint in this action. Upon

information and belief, such was done in an attempt to further insulate Robert Nash from personal liability to Alpine/AGTC under the Consulting Agreement. Since November 22, 2006, the unity of interest between CE Ventures and CoBon has been such that the separate personalities of the two do not exist. Robert Nash's control over CoBon has been exercised both personally and through the entity CE Ventures. On information and belief, Robert Nash exercises exclusive control over CE Ventures and there are no entity formalities observed by Robert Nash relative to CE Ventures.

123. The observance of CoBon's limited liability company form would sanction a fraud, promote injustice, and/or lead to an inequitable result in this action. Likewise, the observance of CB Ventures and CE Ventures' limited liability company forms would sanction fraud, promote injustice, and/or lead to an inequitable result in this action. Among the unjust and inequitable results of observing the limited liability company forms of CoBon, CB Ventures, and CE Ventures would be permitting Steven Nash, Robert Nash, W. Kelly Nash and Anton Tonic, through CoBon, to continue to operate in bad faith in their business relationship with Alpine/AGTC by withholding monies due to Alpine/AGTC under the Consulting Agreement.

WHEREFORE, Alpine/AGTC pray:

a. For a determination and declaration that: (i) the limited liability entity of CoBon shall be disregarded; (ii) CoBon is an alter ego of Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonic, CB Ventures, and CE Ventures; (iii) CB Ventures is an alter ego of Steven Nash; (iv) CE Ventures is an alter ego of Robert Nash; and (v) Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonic, CB Ventures, and CE Ventures are each liable, as alter egos of CoBon, for any judgment rendered against CoBon in this action.

- b. For interest, costs, and attorneys' fees; and
- c. For such other and further relief to which they may prove to be entitled and/or the Court deems is just and proper.

SIXTH CLAIM FOR RELIEF

(Single Business Enterprise Liability against CoBon and CoBon Synfuels #1-4, LLC)

124. Alpine/AGTC incorporate and reallege the allegations of paragraph 1 through and including 123 as if fully set forth herein.

125. CoBon, a limited liability company, is a constituent of a larger single business enterprise created by Steven Nash and Robert Nash to develop synfuel facilities, market the synfuel facilities to third-party purchasers, and collect "Proceeds" for purposes of the Consulting Agreement and profits on binder fees and initial royalty fees. The other constituents of the single business enterprise are the CoBon Synfuel Companies, i.e., CoBon Synfuels #1-4, LLC.

126. Each of the CoBon Synfuel Companies initially was created by Steven Nash and Robert Nash to promote and further the development of synfuel facilities. On information and belief, by at least December 1999, W. Kelly Nash and Anton Tonc were added as members of the CoBon Synfuel Companies. Since at least 2001, the only use of the CoBon Synfuel Companies has been to receive payments constituting "Proceeds" for purposes of the Consulting Agreement and profits on binder fees and initial royalty fees under the Consulting Agreement from synfuel facilities and transfer those monies to accounts controlled by CoBon. The "Proceeds" and profits are then distributed from the accounts controlled by CoBon, leaving CoBon undercapitalized to pay its obligations under the Consulting Agreement.

127. Since at least 2000, CoBon and the CoBon Synfuel Companies have been used only to collect and distribute payments constituting “Proceeds” for purposes of the Consulting Agreement and profits on binder fees and initial royalty fees under the Consulting Agreement.

128. Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and CE Ventures have exerted and do exert such a high degree of concentrated control over the constituents of the aforementioned single business enterprise, as managers, members and or controllers of the various constituents of the enterprise or as persons with interests in receiving distributions from the single business enterprise, that the various constituents forming the enterprise effectively have no separate existence.

129. Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and CE Ventures have abused and do abuse the control of the constituents of the aforementioned single business enterprise in a way that is unjust and inequitable. Specifically, Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and CE Ventures have abused the control of the enterprise so as to withhold payment of the monies due to Alpine/AGTC under the Consulting Agreement in bad faith.

WHEREFORE, Alpine/AGTC pray:

a. For a determination and declaration that: (i) the limited liability entities of CoBon, CoBon Synfuel #1, LLC, CoBon Synfuel #2, LLC, CoBon Synfuel #3, LLC, and CoBon Synfuel #4, LLC, shall be disregarded; (ii) CoBon, CoBon Synfuel #1, LLC, CoBon Synfuel #2, LLC, CoBon Synfuel #3, LLC, and CoBon #4 LLC, form a single business entity controlled by Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and CE Ventures; and (iii) each of

the constituents of the single business entity are liable for any judgment rendered against CoBon in this action.

b. For interest, costs, and attorneys' fees; and

c. For such other and further relief to which they may prove to be entitled and/or the Court deems is just and proper.

SEVENTH CLAIM FOR RELIEF

(Alter Ego Liability Against CoBon Synfuels #1-4, LLC, CoBon, Steven Nash, Robert Nash, W. Kelly Nash, and Anton Tonc)

130. Alpine/AGTC incorporate and reallege the allegations of paragraph 1 through and including 129 as if fully set forth herein.

131. The CoBon Syfuel Companies are Utah limited liability companies. Each of the CoBon Synfuel Companies were created by Steven Nash and Robert Nash in December 1996 to promote and further the development of synfuel facilities. Since at least 2001, each of the CoBon Synfuel Companies have been used only to receive payments constituting "Proceeds" for purposes of the Consulting Agreement and profits on binder fees and initial royalty fees under the Consulting Agreement and distribute substantially all of the payments to CoBon.

132. Each of the CoBon Synfuel Companies is a mere shell and forms a naked framework by which the persons in control of the companies, namely CoBon, Steven Nash, Robert Nash, W. Kelly Nash, and Anton Tonc, have and now use as a mere conduit for their ideas, business, property, and affairs.

133. Steven Nash and Robert Nash are reported members of each of the CoBon Synfuel Companies. CoBon, which is controlled by Steven Nash, Robert Nash, W. Kelly Nash and Anton Tonc, is the sole manager of each of the CoBon Synfuel Companies and has been since the CoBon Synfuel Companies were created. On information and belief, Steven Nash, Robert Nash, W. Kelly Nash and Anton Tonc have received distributions from the payments to the CoBon Synfuel Companies and CoBon that constitute "Proceeds" for purposes of the Consulting Agreement and profits on binder fees and initial royalty fees under the Consulting Agreement (based upon their memberships in CoBon and/or the CoBon Synfuel Companies and/or their interest in receiving distributions from CoBon's share of proceeds from snyfuel facilities).

134. W. Kelly Nash has been a member of CoBon Synfuel #1, LLC, and CoBon Synfuel #3, LLC, since December 1999. On information and belief, W. Kelly Nash is also a member of CoBon Synfuel #2, LLC, and CoBon Synfuel #4, LLC. On information and belief, W. Kelly Nash, personally or through persons or entities under his control, has received distributions from the payments to the CoBon Synfuel Companies and CoBon that constitute "Proceeds" for purposes of the Consulting Agreement and profits on binder fees and initial royalty fees under the Consulting Agreement (based upon Kelly Nash's interest in receiving distributions from CoBon's share of proceeds from snyfuel facilities and his memberships in the CoBon Synfuel Companies).

135. Anton Tonc has been a member of CoBon Synfuel #1, LLC, and CoBon Synfuel #3, LLC, since December 1999. On information and belief, Anton Tonc is also a member of CoBon Synfuel #2, LLC and CoBon Synfuel #4, LLC. On information and belief, Anton Tonc, personally or through persons or entities under his control, has received distributions from the payments to the

CoBon Synfuel Companies and CoBon that constitute “Proceeds” for purposes of the Consulting Agreement and profits on binder fees and initial royalty fees under the Consulting Agreement (based upon Anton Tonc’s interest in receiving distributions from CoBon’s share of proceeds from snyfuel facilities and his membership in the CoBon Synfuel Companies).

136. The unity of interest and ownership between CoBon and each of the CoBon Synfuel Companies is such that there is no separation of personality between them. CoBon is the sole manager of each of the CoBon Synfuel Companies. On information and belief, CoBon does not observe entity formalities relative to any of the CoBon Synfuel Companies.

137. The unity of interest and ownership between Steven Nash and each of the CoBon Synfuel Companies is such that there is no separation of personality between them. Steven Nash exerts a high degree of control over each of the CoBon Synfuel Companies as a member of the companies as well as through his role as sole reported manager of CoBon. On information and belief, Steven Nash does not observe entity formalities relative to any of the CoBon Synfuel Companies.

138. The unity of interest and ownership between Robert Nash and each of the CoBon Synfuel Companies is such that there is no separation of personality between them. Robert Nash exercises a high degree of control over each of the CoBon Synfuel Companies through his role as a member of each of the companies. On information and belief, Robert Nash does not observe entity formalities relative to any of the CoBon Synfuel Companies.

139. The unity of interest and ownership between W. Kelly Nash and each of the CoBon Synfuel Companies is such that there is no separation of personality between them. W. Kelly Nash

exercises a high degree of control over each of the CoBon Synfuel Companies through his role as a member of each of the companies, as well as through his involvement in CoBon. On information and belief, W. Kelly Nash does not observe entity formalities relative to any of the CoBon Synfuel Companies.

140. The unity of interest and ownership between Anton Tonc and each of the CoBon Synfuel Companies is such that there is no separation of personality between them. Anton Tonc exercises a high degree of control over each of the CoBon Synfuel Companies through his role as a member of each of the companies, as well as through his involvement in CoBon. On information and belief, Anton Tonc does not observe entity formalities relative to any of the CoBon Synfuel Companies.

141. The observance of the limited liability forms of the CoBon Synfuel Companies would sanction a fraud, promote injustice, and/or lead to an inequitable result in this action. Among the unjust and inequitable results of observing the limited liability forms of the CoBon Synfuel Companies would be permitting any or all of the following, CoBon, Steven Nash, Robert Nash, W. Kelly Nash, and Anton Tonc, to continue to operate in bad faith by withholding monies due to Alpine/AGTC under the Consulting Agreement.

WHEREFORE, Alpine and AGTC pray:

a. For a determination and declaration that: (i) the limited liability entities of each of the CoBon Synfuel Companies shall be disregarded; (ii) CoBon is an alter ego of each of the CoBon Synfuel Companies, (iii) Steven Nash is an alter ego of each of the CoBon Synfuel Companies; (iv) Robert Nash is an alter ego of each of the CoBon Synfuel Companies; (v) W. Kelly Nash is an alter

ego of each of the CoBon Synfuel Companies; (vi) Anton Tonc is an alter ego of each of the CoBon Synfuel Companies; and (vii) any alter ego of any CoBon Synfuel Company is liable for any judgment rendered against that company in this action.

b. For interest, costs, and attorneys' fees; and

c. For such other and further relief to which they may prove to be entitled and/or the Court deems is just and proper.

EIGHTH CLAIM FOR RELIEF

**(Principal Liability against Steven Nash, Robert Nash, W. Kelly Nash
Anton Tonc, CB Ventures and CE Ventures)**

142. Alpine/AGTC incorporate and reallege the allegations of paragraph 1 through and including 141 as if fully set forth herein.

143. CoBon is the agent of Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures and/or CE Ventures for purposes of receiving, directly and indirectly, and distributing proceeds paid by investors/owners of synfuel facilities, which constitute "Proceeds" and profits from binder fees and initial royalty fees under the Consulting Agreement and as to which Alpine/AGTC are entitled to a 30 percent distribution.

144. Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures and/or CE Ventures exercise control over and participate in the daily operations of CoBon, to the extent it has daily operations given its limited purpose of receiving and distributing proceeds from synfuel facilities.

145. Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures and/or CE Ventures exercise control over and participate in the management of CoBon' receipt and distribution of proceeds from synfuel facilities, which is CoBon's only business.

146. CoBon is a fiduciary of, and, with its consent, acts on behalf of and under the control of, Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures and/or CE Ventures with regarding to receiving and distributing proceeds from synfuel facilities, which proceeds constitute "Proceeds" and profits from binder fees and initial royalty fees under the Consulting Agreement as to which Alpine/AGTC are entitled to a 30 percent distribution.

147. Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CE Ventures and/or CE Ventures, as the principals of their agent, CoBon, for purposes of receiving and collecting proceeds from synfuel facilities, are liable for the actions and liability of CoBon to Alpine/AGTC.

WHEREFORE, Alpine and AGTC pray:

- a. For a determination and declaration that: (i) CoBon is the agent of Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CE Ventures and/or CB Ventures; and (ii) any principal of CoBon is liable for any judgment rendered against CoBon in this action.
- b. For interest, costs, and attorneys' fees; and
- c. For such other and further relief to which they may prove to be entitled and/or the Court deems is just and proper.

NINTH CLAIM FOR RELIEF

(Fraudulent Transfer Pursuant to U.C.A. § 25-6-5 against CoBon, Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and CE Ventures)

148. Alpine/AGTC incorporate and reallege the allegations of paragraph 1 through and including 147 as if fully set forth herein.

149. Alpine/AGTC are creditors of CoBon as defined by the Utah Uniform Fraudulent Transfer Act, Utah Code Annotated § 25-6-1, *et seq.* Specifically, Alpine/AGTC have a claim to payment from CoBon under the Consulting Agreement.

150. Since entering into the Consulting Agreement and receiving proceeds constituting “Proceeds” for purposes of the Consulting Agreement and profits on binder fees and initial royalty fees under the Consulting Agreement, CoBon has made transfers of money, including but not limited to the specific transfers alleged above, with actual intent to hinder, delay, or defraud Alpine/AGTC from collecting the money due to them under the Consulting Agreement.

151. In the alternative, since entering into the Consulting Agreement and receiving distributions of payments constituting “Proceeds” for purposes of the Consulting Agreement and profits on binder fees and initial royalty fees under the Consulting Agreement, CoBon has made transfers of money, including but not limited to the specific transfers alleged above, without receiving a reasonably equivalent value in exchange for the transfers while engaged in business or transactions with Alpine and AGTC for which the remaining assets of CoBon were unreasonably small in relation to the business or transaction. Specifically, since entering into the Consulting Agreement, which obligated CoBon to pay a percentage of payments constituting “Proceeds” for

purposes of the Consulting Agreement and profits on binder fees and initial royalty fees to Alpine/AGTC for services rendered within 30 days of their receipt, CoBon has repeatedly made transfers of money, including but not limited to the specific transfers alleged above, which deplete its accounts to the extent that CoBon's contractual obligations to Alpine/AGTC cannot be fulfilled. On information and belief, CoBon has received nothing in consideration for the transfers. On information and belief, the transferees associated with those transfers of money are Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and CE Ventures, or other persons or entities under their control (based upon their memberships in CoBon and/or the CoBon Synfuel Companies and/or their interest in receiving distributions from CoBon's share of proceeds from synfuel facilities), but CoBon has refused to disclose the transferees to Alpine and AGTC.

152. In the alternative, since entering into the Consulting Agreement, CoBon has made transfers of money, including but not limited to the specific transfers alleged above, without receiving a reasonably equivalent value in exchange for the transfers and intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due. Specifically, since entering the Consulting Agreement, CoBon has repeatedly made transfers of money, including but not limited to the specific transfers alleged above, to the extent that it could not reasonably expect to be able to meet its contractual obligations to Alpine/AGTC as those obligations came due under the Consulting Agreement. On information and belief, the transferees associated with those transfers of money are Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and CE Ventures, or other persons or entities under their control (based upon their memberships in CoBon and/or the CoBon Synfuel Companies and/or their

interest in receiving distributions from CoBon's share of proceeds from snyfuel facilities), but CoBon has refused to disclose the transferees to Alpine and AGTC.

153. The transfers of money by CoBon in question include, but are not limited to, those transfers detailed in paragraphs 75-80, above.

154. CoBon never disclosed the transfers to Alpine/AGTC prior to discovery being undertaken by Alpine/AGTC in this action. Prior to at least some of the transfers in question, Alpine/AGTC had threatened to sue CoBon for breach of the Consulting Agreement and prior to many of the transfers in question, Alpine/AGTC had asserted their claim prior to filing this lawsuit. Cumulatively, these transfers have been of substantially all of CoBon's assets; the transactions are carried out in such a way as to leave CoBon with approximately only \$100,000 of assets on hand and have left CoBon in a position where it cannot fulfill its contractual obligation to Alpine/AGTC. On information and belief, the transferees associated with those transfers of money are Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and CE Ventures, or other persons or entities under their control (based upon their memberships in CoBon and/or the CoBon Synfuel Companies and/or their interest in receiving distributions from CoBon's share of proceeds from snyfuel facilities), but CoBon has refused to disclose the transferees to Alpine and AGTC. Steven Nash is the reported sole manager of CoBon. Robert Nash was a reported member of CoBon prior to November 22, 2003. CB Ventures and CE Ventures are the current reported members of CoBon. Steve Nash, Robert Nash, W. Kelly Nash and Anton Tonc have exercised control over CoBon and/or participating with management of CoBon. Due to their statuses as managers and members of CoBon and persons exercising control over or participating in the management of CoBon, Steven Nash,

Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and CE Ventures are CoBon “insiders” as defined by the Utah Uniform Fraudulent Transfer Act.

WHEREFORE, Alpine/AGTC pray:

- a. For relief pursuant to the provisions of Utah Code Annotated § 25-6-8, including:
 - i. avoidance of the subject transfers to the extent necessary to satisfy Alpine/AGTC’s claims against CoBon;
 - ii. an attachment or other provisional remedy against the money transferred or other property of any relevant transferee, including but not limited to Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and/or CE Ventures, in accordance with the procedure prescribed by the Utah Rules of Civil Procedure;
 - iii. subject to any applicable principles of equity and in accordance with any applicable rules of civil procedure:
 - 1. an injunction against further disposition by CoBon or any transferee, including but not limited to Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and CE Ventures, of the money transferred or of other property;
 - 2. appointment of a receiver to take charge of the money transferred or of other property of any transferee, including but not limited to Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and CE Ventures; or

3. any other relief the circumstances may require.

b. For interest, costs, and attorneys' fees.

TENTH CLAIM FOR RELIEF

(Fraudulent Transfer Pursuant to U.C.A. § 25-6-6 against CoBon, Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and CE Ventures)

155. Alpine/AGTC incorporate and reallege the allegations of paragraph 1 through and including 154 as if fully set forth herein.

156. Alpine/AGTC are creditors of CoBon as defined by the Utah Uniform Fraudulent Transfer Act, Utah Code Annotated § 25-6-1, *et seq.* Specifically, Alpine/AGTC have a right to payment from CoBon under the Consulting Agreement.

157. Since entering into the Consulting Agreement and receiving proceeds constituting "Proceeds" under the Consulting Agreement and profits on binder fees and initial royalty fees under the Consulting Agreement, CoBon has made transfers of money, including but not limited to the specific transfers alleged above, without receiving reasonably equivalent value in exchange for those transfers, and CoBon was insolvent or became insolvent as a result of those transfers. Specifically, CoBon has made transfers totaling over \$57 million since 2001, all the while maintaining a constant balance of approximately \$100,000 in accounts under its control. CoBon's obligations to Alpine/AGTC under the Consulting Agreement are far in excess of \$100,000. On information and belief, the transfers have been made to Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and CE Ventures, or other persons or entities under their control (based upon their memberships in CoBon and/or the CoBon Synfuel Companies and/or their interest in receiving

distributions from CoBon's share of proceeds from Synfuel Facilities), but CoBon has refused to disclose the transferees to Alpine and AGTC.

158. The relevant transfers by CoBon include the following transfers made from various CoBon bank accounts since 2001, including those detailed in paragraphs 75-80, above. Alpine/AGTC has received partial information concerning the relevant transactions through 2006. On information and belief, the pattern of transferring "Proceeds" received from synfuel projects via the CoBon Synfuel Companies continues through the present day, which allegation is based on the fact of the prior transfers and the fact that the CoBon Synfuel Companies have continued to receive payments of "Proceeds" since 2006.

WHEREFORE, Alpine/AGTC pray:

- a. For relief pursuant to the provisions of Utah Code Annotated § 25-6-8, including:
 - i. avoidance of the subject transfers to the extent necessary to satisfy Alpine/AGTC's claims against CoBon;
 - ii. an attachment or other provisional remedy against the money transferred or other property of any relevant transferee, including but not limited to Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and/or CE Ventures, in accordance with the procedure prescribed by the Utah Rules of Civil Procedure;
 - iii. subject to any applicable principles of equity and in accordance with any applicable rules of civil procedure:

1. an injunction against further disposition by CoBon or any transferee, including but not limited to Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and CE Ventures, of the money transferred or of other property;
2. appointment of a receiver to take charge of the money transferred or of other property of any transferee, including but not limited to Steven Nash, Robert Nash, W. Kelly Nash, Anton Tonc, CB Ventures, and CE Ventures; or
3. any other relief the circumstances may require.

b. For interest, costs, and attorneys' fees.

DATED: December 19, 2008.

BERMAN, & SAVAGE, P.C.

By


E. Scott Savage

Stephen R. Waldron

Kyle C. Thompson

Attorneys for AGTC, Inc. and

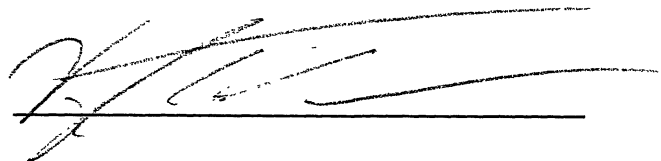
Alpine Coal Co., Inc.

CERTIFICATE OF SERVICE

I hereby certify that on December 19th, 2008, I caused a true and correct copy of the foregoing document **ANSWER TO FIRST AMENDED COMPLAINT AND FIRST AMENDED COUNTERCLAIM** to be served on the following via the method indicated:

William Kelly Nash, Esq.
Evan A. Schmutz, Esq.
Curtis R. Hussey, Esq.
HILL, JOHNSON & SCHMUTZ, L.C.
RiverView Plaza, Suite 300
4844 North 300 West
Provo, UT 84604
Attorneys for Plaintiff

☒ First class, postage prepaid
U.S. Mail
☐ Facsimile (801/375-3865)
☐ Hand Delivery
☐ E-mail to eschmutz@hjslaw.com

A handwritten signature in black ink, appearing to read "E. Schmutz", is written over a horizontal line.

CONSULTING AGREEMENT

This CONSULTING AGREEMENT ("Agreement") is entered into to be effective November 1, 1996 by and between CoBon Energy, L.L.C., located at 1145 East South Union Ave., Midvale, UT 84047 ("CoBon") and AGTC, Inc., located at 7 Oakwood Way, Robbinsville, NJ 08691 and Alpine Coal Co., Inc., located at 3920 Market Street, Camp Hill, PA 17011 (collectively "A & A").

Recitals

Whereas, CoBon has entered into a License Agreement with Covol Technologies, Inc. ("Covol") and has acquired the right to use a proprietary "Coal Technology" as defined therein in connection with coal briquette manufacturing operations to be developed hereafter by CoBon;

Whereas, A & A is an independent contractor, is knowledgeable of the coal industry, has experience in the development and marketing of coal and related products, and is acquainted with representatives of numerous large coal producing and consuming companies, including individuals and entities who may have an interest in participating as potential suppliers, purchasers, developers, operators, contractors, investors or affiliates with respect to coal briquette manufacturing facilities to be developed hereafter by CoBon; and

Whereas, CoBon desires to receive consultation and assistance from A & A and A & A desires to provide consultation and assistance to CoBon in connection with the development and exploitation of briquette manufacturing facilities utilizing the proprietary Coal Technology;

Agreement

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the parties agree as follows:

1.0 Consulting Services and Project Development Assistance. A & A, at its own expense, agrees to and shall (i) furnish CoBon with necessary and reasonable consulting services and assistance in furtherance of CoBon's identification, evaluation, development and construction of briquette manufacturing facilities (including suitable sites and plants) capable of producing coal briquettes and related products utilizing the Coal Technology, which will qualify for I.R.C. Section 29 tax credits for up to an eleven (11) year time

1.3 Development Schedule. A & A and CoBon acknowledge that binding construction agreements required for purposes of satisfying Section 29 tax credit qualification must be negotiated and executed by CoBon, or its assigns, no later than December 31, 1996 or such earlier time as may be required by statute. Similarly, CoBon's development of any facility site(s) and plant(s) shall be completed on or before a target production deadline of July 1, 1998 ("Production Date") or such earlier date as CoBon may determine to be commercially reasonable. Consultation and assistance by A & A hereunder shall be furnished so as to facilitate CoBon's completion of the agreement(s) and development of the project(s) in accordance with the foregoing schedule.

2.0 Consulting Fee. In consideration of its performance of the provisions hereof, A & A shall be entitled to receive a consulting fee equal to thirty percent (30%) (to be split evenly between AGTC and Alpine) of the cash proceeds and other consideration (including stock, tax credits distributed or retained, etc.) received by CoBon for tax credits (collectively referred to as "Proceeds") generated by virtue of CoBon's sublicensure (or other form of transfer, assignment or business agreement) of the Coal Technology to third party purchaser(s) of the briquette manufacturing facility(ies) ("Consulting Fee"). Subject to the provisions of paragraph 4.0, the Consulting Fee shall be paid from such Proceeds as provided herein.

2.1 Escrow Period/Consulting Fee Payment. Upon receipt of the Proceeds and during the initial two years that Proceeds are received for tax credits, CoBon shall place 100% of the cash portion of such Proceeds (which includes both A & A's 30% interest and CoBon's remaining 70% interest therein) into an interest-bearing holding account with said cash Proceeds to be distributed to the parties only after completion by CoBon of a good faith evaluation and satisfactory confirmation of the availability of tax credit qualification by the Internal Revenue Service (i.e., may include private letter ruling issuance) to the purchaser. A & A shall be advised with respect to the status of the evaluation and confirmation process and shall consult with CoBon respecting the process. Unless consented to in writing by A & A, CoBon shall not be entitled to withdraw and/or distribute any portion of its 70% interest in the cash Proceeds unless a proportionate amount of the 30% Consulting Fee is also paid to A & A at the same time (i.e. no distribution of the cash Proceeds, whether in the form of Consulting Fee payments to A & A or an equity withdrawal or distribution payments to the members of CoBon, shall be made unless such distributions are made at the same time and on a pro-rata basis).

Except as otherwise provided, within thirty (30) days of CoBon's satisfactory completion of the evaluation and confirmation process, which satisfaction shall not be unreasonably withheld by CoBon, CoBon shall pay the Consulting Fee to A & A, together with A & A's proportionate share (30%) of any interest that shall have accrued thereon during the escrow period. Concurrent with the payment of the Consulting Fee, CoBon shall be entitled to withdraw and/or distribute the remaining portion of the cash Proceeds to its members, together with CoBon's proportionate share (70%) of any interest that shall have accrued thereon during the escrow period.

All non-cash Proceeds received by CoBon shall likewise be held in trust subject to the same conditions and payment terms as applied to cash Proceeds above. To the extent it is deemed commercially necessary, the non-cash Proceeds shall be monetized by CoBon in order to pay A & A and CoBon their respective share thereof. Any dispute as to the value thereof, which cannot be resolved in good faith by the parties, shall be determined in accordance with the arbitration provision hereof.

2.2 Consulting Fee Payment During Remaining Term During the remaining term of this Agreement that cash proceeds are received for tax credits, and provided satisfactory confirmation has been reasonably obtained during the initial two year period as described above, CoBon shall pay the Consulting Fee to A & A within thirty (30) days of its receipt of the cash proceeds.

2.3 Minimum Reserve Notwithstanding the provisions of this section, A & A acknowledges that CoBon may during the term of this Agreement maintain, from the cash proceeds received for tax credits, a minimum reserve balance equal to \$200,000. This reserve shall be held for the purpose of assisting in the evaluation and defense of any third-party claim, action, demand, damage or loss threatened or incurred as a result of the parties' performance hereunder. This clause shall not, however, be construed to limit the parties' respective liability to each other hereunder including paragraph 14.0. Upon expiration of this Agreement, the reserve shall be distributed to the parties (i.e. in the form of a Consulting Fee payment to A & A and a withdrawal or distribution to members to CoBon, together with the proportionate shares of any interest that shall have accrued thereon during the escrow period).

2.4 Acknowledgement of Risk A & A expressly acknowledges the risks of loss and of nonpayment of the foregoing consideration in the event of an unsuccessful development of biquetting facilities as contemplated by CoBon.

including without limitation, the parties' inability or failure to successfully complete all required activity within the statutory time frame and the possibility of the Internal Revenue Service's non-recognition of any of the participants' tax credit eligibility. A & A shall not be entitled to receive the consideration referenced until and unless all necessary development steps have been completed and tax credit qualification has been confirmed by the Internal Revenue Service as provided herein.

3.0 Coal Technology License. A & A acknowledges that CoBon has obtained from Covol a license to use Covol's proprietary Coal Technology, including the right to purchase and/or manufacture Covol's patented binder, in connection with CoBon's manufacture and sale of coal briquettes and related products, which the parties believe by virtue of the use of the Coal Technology will qualify for I.R.C. Section 29 tax credits. In the event facilities are successfully developed and marketed to a third party purchaser, and subject to the purchaser's payment to CoBon (i) of a Sublicense Royalty Fee to be negotiated by CoBon, and (ii) of a Binder Fee to be imposed by CoBon in an amount not less than the actual cost to obtain the binder, plus twenty percent (20%) per ton of product manufactured, CoBon presently intends to sublicense its right to use the Coal Technology, including Covol's binder, to the third party purchaser for purposes of qualifying all coal briquette production utilizing the Coal Technology for I.R.C. Section 29 tax credits. In the event CoBon successfully negotiates a Sublicense Royalty Fee payment from a prospective purchaser for an amount greater than \$3.00 per ton, CoBon agrees to share any profit derived therefrom with A & A on a 70% / 30% basis. Likewise, in the event CoBon successfully negotiates a Binder Fee payment from a prospective purchaser for an amount greater than CoBon's actual cost, CoBon agrees to share any profit derived therefrom with A & A on a 70% / 30% basis.

Any sublicense of the Coal Technology shall be in strict accordance with the applicable and non-confidential terms and conditions of CoBon's License Agreement with Covol and the purchaser shall agree to be bound by and to perform in strict accordance with all such terms and conditions as if in the place of CoBon. The purchaser shall further agree to indemnify, defend and hold harmless CoBon from and against any claims, demands, damages or actions arising from an alleged or actual breach of such sublicense. A & A will take reasonable steps to insure any potential purchaser is advised of the foregoing

Nothing herein shall be construed as granting A & A any interest in or a right to receive any portion of the Sublicense Royalty Fee or Binder Fee, except

as expressly provided herein.

4.0 Expense Reimbursement. A & A further acknowledges that CoBon has incurred considerable time and expense to date in connection with the development of this project and that CoBon shall receive the sum of \$700,000 to reimburse it for such time and expense relating to the acquisition of the Coal Technology License Agreement and in the development of briquetting facilities. This reimbursement shall be paid to CoBon from the first of any cash proceeds (including proceeds for tax credits generated as a result of CoBon's successful marketing of a site and plant to a third party purchaser) generated after the Sublicense Royalty Fee and any applicable Binder Fee are paid and prior to the calculation and payment of all or any portion of A & A's Consulting Fee (i.e., 30% interest) or any distribution to the members of CoBon of their respective interest in cash proceeds received for tax credits. CoBon shall also be entitled to be reimbursed for actual out-of-pocket costs incurred for product sampling, shipping and testing, which may be conducted by Covol, Combustion Resources or other similarly situated testing facilities.

Notwithstanding the foregoing right of reimbursement, and subject to the borrower's execution of a suitable corporately guaranteed promissory note and related documentation, CoBon agrees to advance within thirty (30) days following receipt of the cash proceeds (i) to A & A an amount equal to thirty percent (30%) of the estimated net profit received by CoBon for the Sublicense Royalty Fee, Binder Fee and tax credits generated up to a maximum of \$100,000 (i.e. pro-rata distribution of \$50,000 to AGTC and \$50,000 to Alpine) and (ii) to the members of CoBon and amount equal to seventy percent (70%) of the estimated net profit received by CoBon for the Sublicense Royalty Fee, binder Fee and tax credits generated up to a maximum of \$233,334 (i.e. pro-rata distribution based on member equity) during each of the first two years of this Agreement. This advance shall be extended to take in consideration the negative cash flow condition presently anticipated by the parties to exist on the part of A & A during the initial stages of project development.

Nothing herein shall be construed as granting A & A any interest in or a right to receive any portion of the \$700,000 expense reimbursement.

5.0. Term and Termination. The term of this Agreement shall commence on November 1, 1996 and shall, unless earlier terminated upon sixty (60) days advance written notice for legal cause, continue for a term of eleven years or until October 31, 2007 or for so long as a purchaser can qualify for tax

credit eligibility, including any extension hereof under paragraph 6.0. For purposes hereof, legal cause shall be defined as (i) any act or omission on the part of A & A constituting a material breach of the performance of its duties hereunder, which shall remain uncured to the reasonable satisfaction of CoBon for a period of forty five (45) days following receipt of a written request by CoBon that such act or omission be immediately cured; (ii) any intentional misconduct on the part of A & A in the performance of its duties hereunder; or (iii) any criminal conduct on the part of A & A in the performance of its duties hereunder. Nothing herein shall be construed to allow CoBon to terminate this Agreement on the basis of personal conduct not adversely affecting performance of this Agreement.

6.0 Tax Credit Term Extension. Notwithstanding the eleven (11) year term of this Agreement or of any third party purchase or other related agreements which may be negotiated and executed hereafter, the parties agree and acknowledge that such terms shall be automatically extended to coincide with any Congressional extension of the tax credit qualification time period hereinafter enacted.

7.0 Attorneys Fees and Costs. Each party shall be responsible for all attorneys fees, costs or expenses incurred to date in connection with the negotiation and finalization of this letter agreement.

8.0 Governing Law. This agreement shall be governed by the laws of the State of Utah.

9.0 Modification. No modification of this agreement shall be binding upon the parties unless made, in writing, and signed by both parties.

10.0 Authority To Contract. In connection with the execution hereof, the parties agree to and shall provide each other with information regarding their respective ownership, authority to do business and authority to execute this letter agreement. CoBon represents that Covol does not maintain any interest in CoBon.

11.0 Integration. This Agreement constitutes the entire and integrated agreement of the parties and supersedes all prior discussions, representations and agreements between the parties.

12.0 Relationship. Each parties hereto shall be deemed an independent

contractor and nothing herein shall be construed to establish a partnership or joint venture relationship between the parties. Each party has sole responsibility for the payment of each of its employee's wages, payroll taxes and benefits. By virtue hereof, neither party assumes, directly or by implication, the debts, obligations, taxes or liabilities of the other party.

13.0 Arbitration Any material dispute between the parties arising under this Agreement which is not resolved by good faith negotiation shall be submitted by either party to binding arbitration in Denver, Colorado in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award may be entered in any court with jurisdiction thereof. The costs of arbitration shall be borne by the parties in proportions decided by the arbitrator(s).

14.0 Mutual Indemnification Each party agrees to and shall indemnify, defend and hold one another, their respective directors, officers, members, and agents, from and against all claims, damages, losses and liabilities of any kind arising from said party's negligent or intentional misconduct or its material breach of the terms or conditions hereof.

15.0 Assignment Neither party may assign any of its rights or obligations under this Agreement to any other person, firm or corporation without the express written consent of the other party.

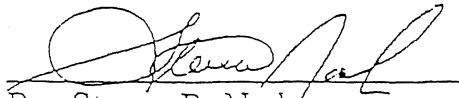
16.0 Equity Interest In CoBon In the event CoBon hereafter becomes a publicly traded corporation, CoBon agrees to so advise A & A of this fact prior to becoming a publicly traded corporation so as to reasonably allow A & A to convert its right of payment of the consideration referenced in paragraph 2.0 into an equivalent equity interest in such publicly traded corporation. Such interest shall be subject to the parties' compliance with applicable local, state and federal securities and other laws, including the execution of appropriate subscription and other agreements to be prepared by CoBon.

17.0 A & A's Disclosure of Covol Claim/Litigation CoBon acknowledges A & A has disclosed the existence of a dispute between A & A and Covol which, if pursued, may not be in the best interests of CoBon. Nothing herein shall be construed to limit A & A's ability to zealously pursue the existing claim it has asserted against Covol, including appropriate filings in any state or federal forum with jurisdiction, as a result of that certain letter agreement with Covol dated March 3, 1996.

18.0 Access To Records. CoBon agrees to furnish A & A true and correct copies of any agreement(s) finally negotiated and executed between CoBon and third parties pertaining to A & A's responsibilities, performance and compensation hereunder. A & A agrees to treat such agreement(s) as confidential and proprietary and shall not disclose the existence, nature or terms thereof to third parties without the prior written consent of CoBon.

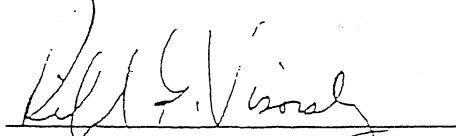
Dated this 5 day of December, 1996.

CoBon Energy, L.L.C.



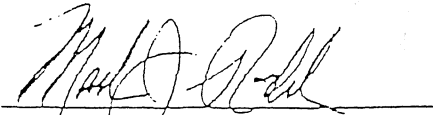
By: Steven R. Nash
Its: Manager and President

AGTC, Inc.



By: Richard G. Visovsky
Its: President

Alpine Coal Co., Inc.



By: Mark J. Rodak
Its: President

Tab F

VIRON ENERGY

3920 Market Street	Camp Hill, Pennsylvania 17011	717-730-8412
7 Oakwood Way	Robbinsville, New Jersey 08691	609-799-5313

March 27, 1998

Mr. Steve Nash
Mr. Robert Dulcoba
Robena, L.L.C.
1145 East South Union Avenue
Midvale, Utah 84047

Re: Robena Project
Greene County, Pennsylvania

Via: Fax 801-566-0088
Fax 415-278-6028

Dear Sirs:

As you are aware Alpine Coal Company, Inc. and AGTC, Inc. herein after referred to as Viron Energy, are party to a December 5, 1996 Consulting Agreement with Robena project developer CoBon Energy, L.L.C.. As per the agreement, Viron Energy shall devote such consulting time and resources as are reasonably required to assist and support CoBon in connection with the identification, evaluation and obtaining suitable raw material resources, the selection of suitable briquette facility site locations, the construction and management of an adequate briquette plant and operation, the negotiation and acquisition of coal product sales contracts, the securing of site permits and confirmation of regulatory compliance respecting all aspects of plant operation.

With regard to the Robena project, Viron has successfully performed the aforementioned duties to secure financing and construction commencement. There are however, anticipated services beyond the original scope of work. Firstly, raw material resources have been identified for the project, namely, Ponds No. 4 and No. 6 with over 9,000,000 tons available. Since the preparation plant will not be concurrently constructed, the project is in need of securing a reliable supply of processed fines at the lowest possible cost capable of meeting the Consol specifications for purchase.

Secondly, the entire fines coal processing segment of the project has not commenced. Although a few proposals were received in response to an RFP, no clear cut decisions have been made relevant to a vital component to the success of the project. With the unprecedented influx of interest in Section 29 coal projects, engineering companies and equipment suppliers have be deluged with business this year. In fact, key new processing components such as centrifuges may have lead times in excess of one year or more. Therefore a need exist to assist in evaluating engineering companies, plant design, equipment selection and availability, and possibly sourcing used processing equipment.

END

Mr. Steve Nash
Mr. Robert Dulebahm
March 27, 1998
Page 2

Thirdly, a need exist to develop fall back markets in the event the product does not meet specifications demanded by Consol, or quite possibly, markets that may bring a premium over Consol's purchase price. And finally, a need exist for Consol liaison between all parties to insure proper communication.

The purpose of this letter therefore is to identify several services required for the Robena project beyond the original scope of work of the CoBon Agreement and present a consulting agreement proposal capable of addressing the previously discussed needs. Viron hereby offers Robena, L.L.C. its engineering and consulting services for a \$20,000 per month flat fee plus expenses commencing on April 1, 1998 until July 31, 1998. Any services required beyond July 31, 1998 will be negotiated at that time.

With regard to our availability and as indicated to you several weeks ago, Viron's consulting agreement with ABB has been expanded to an international arena. Our plans to assist ABB with sourcing fuel for their projects in Japan, China and Russia was scheduled to commence on or about August, 1998, however ABB is requesting an acceleration of our assistance, if possible, that would require extensive travel to Europe and the Far East. We have indicated to them of our need to be stateside through July, 1998, therefore we must get a very quick response to this proposal.

We look forward to your timely response, and look forward to working with you on this project.

Sincerely,



Mark J. Rodak
Partner

MJR:bas
cc: Rick Visovsky

VIRON ENERGY

CE 075113

END

Mar-27-98 10:21A Jerry Burkett @ ABB PFBC 804 740 4771

P.01



23 March 1998

Alpine Coal Company, Inc
3920 Marker Street
Camp Hill, PA 17011

Attention: Mr Mark Rodak

Dear Mark:

We hope all is going well with your programs. The PFBC business development program is shifting into high gear. The response to our off-spec fuel fired projects in Italy and USA is stronger than expected. From meetings conducted in Finspong, Sweden, last week we have concluded with the need to accelerate both Rick Visovsky and your assistance in sourcing waste fuel, ash disposal and sorbent sites for new projects identified in Europe and in the Far East.

Since your involvement was scheduled for later this year, I hope this will not create a conflict with your other endeavors. Please contact me as soon as possible to discuss travel plans and to coordinate efforts.

I will be at my Sweden office for the weeks of 30 March and 6 April and can be reached at 011 46 122 15820 (FAX) and 011 46 122 81341 (Phone). When you call I hope to hear good news concerning your schedules.

By the way, I was able to find some prime cigars in Europe last week and have put your name on a couple.

With best regards,

Distribution:

Tomas Wangberg, President ABB Carbon

Jerry D. Burkett, PE VP International Business Development

@ ABB Carbon AB

ABB PGI-PFBC Power Plants Division

15.27.1963 11:06

Tel: +46 122 84000
Fax: +46 122 15820211 El Comedo Drive
Richmond, Virginia 23101Tel: 804 740-4772
Fax: 804 740-4771

RECEIVED FROM 804 740 4771

15.27.1963 11:03

P. 1

END

CE 075114

Tab G

Robena, L.L.C.

*1145 East South Union Avenue
Suite 100
Midvale, UT 84047
Telephone: (801) 255-5545
Fax: (801) 255-5661*

April 10, 1998

Mr. Rick Visovsky
AGTC, Inc.
7 Oakwood Way
Robbinsville, NJ 08691

Sent Via Fax

Re: Coal Fines for the Robena Project - Startup Period and
Project Update

Dear Rick,

I have received several letters from you within the past few days (specifically one on 4/7/98, three on 4/8/98 and one on 4/9/98 as well as the letter from Mark on 3/27/98). As you are probably aware, I have been extremely busy keeping all the balls in the air on the Robena project (the "Project"). I have been out of the office the past few days and have finally had a few moments to sit down and read all the mail you recently sent. I have never seen so much paperwork from you in our business relationship.

I appreciated your various comments, but must admit that I am a little confused as to certain references and innuendos in some of the letters. Specifically, there is reference to Viron Energy ("Viron"). I saw this reference in the letter from Mark and I must say I do not know who Viron is. This is the first that I have heard of Viron and it appears to me that you and Mark and perhaps third parties (Scott Staruch?) have created an organization here for the purpose of attempting to broker sales of coal to the Project. If this is the case, I need some clarification.

I am mindful, however, of the fact that CoBon has a consulting agreement in place with AGTC, Inc. and Alpine Coal Co., Inc. (the "Agreement"), which for all intents and purposes already covers what I believe is the scope of Viron's proposal. Again, perhaps I am not understanding who Viron is or what it is proposing, but my initial reaction is to ask why is CoBon receiving a proposal from a company by the name of Viron when CoBon already has executed an Agreement for the necessary and reasonable consulting services and assistance with respect to the obtaining of suitable raw material resources including coal fines, etc. for this Project. It makes no sense to

Mr. Rick Visovsky
April 10, 1998
Page 2

me, as I review it in this context, for CoBon to pay for such services twice if that is what you are proposing. CoBon has already agreed to pay for those consulting and such brokerage services in the Agreement. The primary motivation for the Agreement was to eliminate the need for third party brokers and to rely on your expertise and relationships in identifying and obtaining the appropriate resources to the Project. That is certainly my understanding with respect to the Agreement. Perhaps I have misunderstood Viron's proposal. I tried unsuccessfully to reach you to discuss this last week.

As I have stated in correspondence to you to this point, it is critical that we move forward with the securing of raw material resources (clean coal fines) for the startup procedure and short term operation (prior to operation of the preparation plant) of the Project. As you know, because of our perception of your inattention to this most critical need, CoBon has proceeded to solicit proposals from several parties to provide such coal fines. We have received responses from Pond Reclamation and Bob Taylor. In reviewing those responses, and in analyzing the underlying specifications referenced and conditions, there are many questions that need to be asked and considerable due diligence that needs to be performed. It is this very consultation and due diligence relating to securing suitable raw materials that I am expecting you to be providing incident to the Agreement. This work needs to be completed as soon as possible, given the pending construction deadline and in-service deadline for the Project.

By way of a further update, most of the closing conditions for the bridge financing for the agglomeration plant have been satisfied. Needless to say, CoBon principals have been extremely busy and have devoted long hours and timeless effort to this end. CoBon anticipates that the construction schedule will be met at this point. As I have indicated to Mark and have tried unsuccessfully to do with you since we have not spoken for a few weeks, we will continue to be extremely busy from the standpoint of project management issues during the construction phase (engineering, design, material procurement and expediting, construction supervision, monitoring vendor relations, coordinating and supervising the legal issues, permitting issues, etc.). Mark has been helpful in working on the due diligence permitting issues, however they are still not complete. More work needs to be done to complete all of the anticipated permitting issues that have been identified by Walt Heine and counsel to allow for operation of the preparation plant. These things have to be taken care of immediately. I would like to have assurances from you or Mark that the permits anticipated for operation have been applied for and will be in place within the next two to three weeks.

CoBon has not discussed and has certainly not reached any agreement as it relates to Viron. Viron's proposal, based upon my present understanding, does not appear to be applicable and is therefore of no interest to CoBon. If Viron is offering to do something that CoBon has to go out and pay a Vendor to do anyway, and if Viron is saying that it wants to undertake that role, then that needs to be communicated to me and CoBon may be interested. Obviously, a conflict of interest exists to the extent that you, as owners of Viron, attempt to provide services relating to

Mr. Rick Visovsky
April 10, 1998
Page 3

this Project given your contractual duty to protect and advance CoBon's interests under the Agreement. The whole point of the Agreement is for you to assist CoBon and either eliminate the middle man or keep the middle man honest. Viron would certainly have interests contrary to those of CoBon.

CoBon expects that you will perform all of your obligations under the Agreement. This includes, but is not limited to doing all things necessary and reasonable to assist CoBon with the acquisition of suitable the raw materials, including the identification of such suitable resources, the identification of and negotiation of relevant purchase agreements and the delivery of such raw materials pertaining to the Project.

If you have a proposal that eliminates the foregoing conflicts I am certainly willing to discuss such a proposal. We have never anticipated dealing with brokers unless there is some exclusive broker arrangement out there that we are unaware of. As I noted, a primary reason for the Agreement was to eliminate the need for CoBon to deal with brokers. As you know, this Project simply cannot afford to deal with middle men on the raw material acquisition side. When this Project was developed, you were contracted to assist and consult with respect to securing raw material sources; evaluating raw material quality; and assisting with plant design, plant operation, product marketing and sales. CoBon essentially brought you in-house in lieu of treating you as outside consultants/brokers. Your compensation for such in-house services is considerable. If CoBon had wanted to work with you in the capacity of a broker, CoBon would have structured the relationship and payment schedule differently. However, CoBon contracted with you and agreed to pay you based upon a percentage of revenues derived from the Project for such services.

As we discussed on the phone last night, we can get together in the Uniontown area in the near future for a meeting to discuss this further. I would also appreciate it if no further correspondence were sent to from Viron to Rob Dulebohn at Providian, as this just creates additional explanation problems for me which I do not have time for.

By way of further update, I have requested Shawn to forward a complete set of design drawings to you and Mark for your review. Recognize that this is a design/build project and these drawings represent the latest version, but that they are certainly subject to change or revision. We would certainly welcome any comments or suggestions you may have. Your comments last night on the phone regarding the certified belt scale and on-line analyzer were helpful. Shawn will be in contact with you to discuss these items further and to discuss with you an approach to get Consol to accept your recommendations. We do not want any surprises in the future on these issues.

I will be at the Project site on Wednesday, April 15, 1998 for a status/update meeting with Consol. If you there is anything that you need me to communicate at that meeting, please let me

Mr. Rick Visovsky
April 8, 1998
Page 4

know.

If you have any questions, or need any additional information, please give me a call at (801) 255-5545. Thank you for your timely response to this request.

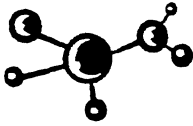
Sincerely,

A handwritten signature in black ink, appearing to read "Steven R. Nash". The signature is fluid and cursive, with the first name "Steven" being more prominent than the last name "Nash".

Steven R. Nash
President

cc: Mark Rodak, Alpine Coal Co., Inc.

Tab H



CoBon Energy, L.L.C.

1145 East South Union Avenue
Midvale, Utah 84047
Telephone: (801) 255-6666
Fax: (801) 566-0088

May 8, 1998

Via Telecopy

Mr. Rick Visovsky
AGTC, Inc.
7 Oakwood Way
Robbinsville, NJ 08691

Mr. Mark Rodak
Alpine Coal Co., Inc.
3920 Market Street
Camp Hill, PA 17011

Re: Robena Coal Fines Acquisition

Dear Rick and Mark:

This letter is a follow up to your memorandum dated April 16, 1998 and our recent discussions regarding the need the Robena project (the "Project") currently has for coal fines to be utilized in the start up phase and until the wash plant is constructed and operating. As indicated in my letter dated April 10, 1998, CoBon Energy, L.L.C. ("CoBon") understands that AGTC, Inc. ("AGTC") and Alpine Coal Co., Inc. ("Alpine") are responsible for assisting CoBon in obtaining suitable coal fines relating to the Project, including such fines as may be required in the start up and pre-wash plant construction time frame. You have nevertheless advised me that you are only willing to assist CoBon in this regard if Viron Energy ("Viron"), a separate entity the two of you have formed, is retained to assist with the identification, evaluation and obtaining of such raw materials.

As you know, this Project is in the twelfth hour and literally millions have been invested by CoBon and Providian. As previously indicated, CoBon is frustrated that identifying and obtaining a suitable short term raw material supply has even become a problem. Nevertheless, CoBon is understandably more concerned that if suitable coal fines are not located immediately, the Project will be in jeopardy and may fail altogether. As a result of this economic hardship, and without waiving any of its rights under CoBon's November 1, 1996 Consulting Agreement with AGTC and Alpine, CoBon has decided to move forward in working with you to solve this urgent problem. Inasmuch as CoBon has previously made advanced distributions to AGTC and Alpine incident to this Project, and while reserving the right to treat any fees paid by the Project to Viron hereafter relating to obtaining suitable raw materials as additional advancements or as CoBon may otherwise deem appropriate, CoBon agrees to work with Viron as follows.

COBON ENERGY, L.L.C.
1145 EAST SOUTH UNION AVENUE
MIDVALE, UTAH 84047
Telephone: (801) 255-6666
Facsimile: (801) 566-0088

DATE: 5/11/98

TO: MARK RODAK

FROM: STEVE NASH

FAX (717) 730-9416

TEL (717) 730-9412

FAXED
5/11
4:58
p.m.

SUBJECT:

PAGES: 3

including this cover sheet.

COMMENTS:

Tab I

AGTC, INC.
7 OAKWOOD WAY
ROBBINSVILLE, NEW JERSEY 08691

Fax Cover Sheet

DATE: May 12, 1998 TIME: 11:10 AM

TO: Steve Nash PHONE: 801/255-6666
Cobon Energy FAX: 801/566-0088

FROM: Richard G. Visovsky PHONE: 609/799-5313
FAX: 609/275-0779

RE: Scott Staruch, LSP and Mark Rodack, Alpine

CC:

Number of pages including cover sheet: 2

Message

Dear Steve,

This is in response to your fax dated May 8, 1998 which you only saw fit to send on May 11 after the close of business yesterday May 11, 1998. I guess your fax machine was inoperable during this period. I am happy to see you have been able to get it repaired so expediently. I guess your phones are currently inoperable since you have seen fit to ignore my request for a phone call from you at 3:00 PM Salt Lake City time yesterday. I have no message on my voice mail returning this call.

Unfortunately, this call was important, as I had the opportunity to buy distressed coal that would have delivered to Robena for about \$20.00 per ton. This coal probably would have been sufficient to fulfill your June needs. The quality was sufficient to yield a 12,500 to 13,000 BTU product. However, this coal was purchased by an exporter and is no longer available.

Steve, there has to be away to get a timely response from you on this and other matters. There needs to be a system where decisions on purchases can be made in an expedient manner. Your receptionist indicated you were in the office. I emphatically stated to her my need to speak with you. I guess my mistake was not putting this request in writing. I apologize and this will not happen again. Obviously, we need to keep better records. As further evidence of our efforts is a response to our original offer to purchase from LRSI. The original offer was forwarded to your office for your review. As of today, you have provided no comments. Attached is LRSI's initial response.

Now, back to your fax. The quick and easy response is no. The only agreement in effect between our parties is the original contract signed in 1996. I have no interest in this or any other agreement. Therefore as we stated in our meeting four weeks ago. We expect Cobon to honor this agreement. In addition, we have fulfilled the terms of our agreement and had the full intent of providing May/June's requirements yesterday.

You refer to a separate entity that Mark and I have formed "Viron". If you review our contract you will notice that you referred to Alpine and AGTC as A&A. As this entity does not exist in any way,

Mark and I took the steps to formalize our relationship approximately one year ago. Since this name gives you a problem, we will no longer refer to ourselves as Viron in our dealings with Cobon. This entity was solely formed to make our relationship easy for Cobon. Obviously, you have a problem with this name as there is absolutely no difference in our dealings with Cobon.

We are equally frustrated in our current dealings. To fully recognize Cobon's millions of commitment we suggest you provide us with an auditable statement covering all expenditures and receivable including loans received by Cobon. It is obvious that to prevent any questions or ill feelings at a later date A&A should be brought up to speed. Also, A&A needs a copy of all documents pertaining to Covol, PACE Carbon, Providian, Coalco and Peletco or any other name under which a transaction has occurred between Cobon and the aforementioned parties. As our agreement states, A&A will be entitled to a copy of all agreements. To date you have failed to provide said documents. We also will accept the latest draft in lieu of final copies.

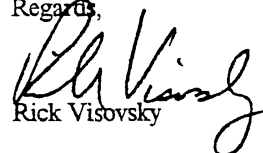
Your letter of May 8 seems hysterical in tone and content. It is beyond me how Cobon or any reasonable business person could consider the project in jeopardy at this time. Your construction is still on going and at least 4 to 6 weeks from completion. Second, Robena has not taken any steps to receive these fines. If you so desire, we will continue to try to make these arrangements at the best possible advantage to Robena. I believe your basic lack of understanding of this part of the business can be viewed as more detrimental than having fines in position on May 12, 1998. I also don't see Robena incurring any economic hardship at this time, please explain this statement in full or retract it in writing.

You also must understand, Robena has not taken steps to set up a budget to my knowledge for these initial purchases. For the initial 5000 tons, I need to know that \$100,000 to \$125,000 is available for payment and not subject to your whims. AGTC's reputation in this business is that it has never purchased a ton of coal it could not pay for. Therefore, I need Robena's full backing and understanding of this prior to making a purchase on Robena's behalf. The coal industry's acceptance of this fact is unequivocal. In fact your partner in this operation Consol has done business on this basis for in excess of four years.

In reference to your statement that Cobon has made advance distributions to AGTC and Alpine incident to this project. You know this is not true. Cobon's payments to AGTC were fully delineated to you in previous faxes. These payments provided value to Cobon in the form of extensive information on the Robena reserves. Needless to say without this information and assistance Cobon would not have a Robena project today. A&A does not consider these payments as advance payments.

In summation, A&A does not agree to your comments from the fax dated May 8, 1998 and received May 11, 1998 after business hours.

Regards,


Rick Visovsky

Tab J

ALPINE COAL COMPANY, INC.



3920 MARKET STREET CAMP HILL PENNSYLVANIA 17011

(717) 730-9412
FAX (717) 730-9416

May 12, 1998

Mr. Steven R. Nash
President
CoBon Energy, L.L.C.
1145 East South Union Avenue
Midvale, Utah 84047

Via Fax: 801-566-0088

Re: Robena Project

Dear Steve:

In receipt of your faxed correspondence dated May 8, 1998 and received yesterday, this letter response serves notice to CoBon Energy, L.L.C. (CoBon) that Alpine Coal Company, Inc. (Alpine) denies your inferences, allegations and conclusions set forth therein.

Firstly, under no circumstance is Alpine putting CoBon under duress or attempting to jeopardize the above referenced project at the twelfth hour as you allege. Contrarily to your statement, the matter of start up coal fines for the project has been discussed on numerous occasions following closing of the project, not the least of which was during our meeting last month in Masontown, Pennsylvania when resolve to this matter was thought to be settled. Now one month later, nothing has been settled and you are accusing Alpine of unethical business practices.

For the record, Alpine believes that within the scope of our November 1, 1996 Consulting Agreement and the circumstances known and represented to exist at the time of execution of the document, "raw materials" were defined in terms of waste fines either in a pond or a refuse pile which would be utilized in the project either in their existing condition or upgraded in quality through a supporting and coincident preparation plant. Only due to CoBon's tardiness in obtaining an investor and nature of CoBon's investor's reluctance to build a processing plant simultaneously with the agglomeration plant has this issue come to light.

Again for the record, Alpine has not and will not put the issue of start up fines as an excuse for project failure. Alpine has, and will continue in our efforts to secure the initial 3,000-5,000 tons of fines for start up of the agglomeration plant.

Mr. Steve Nash

May 12, 1998

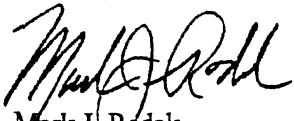
Page 2

Secondly, your allegation that Alpine has received advanced distribution incident to this project is categorically denied and a demand herein is made upon CoBon for full disclosure and support of this allegation.

Thirdly, with regard to our agreement and provisions provided therein, Alpine has been and does herewith request true and correct copies of any agreement(s) finally negotiated and executed between CoBon and third parties pertaining to Alpine's responsibilities, performance and compensation. As of this date the only executed document in our possession is the Consol Marketing Agreement.

Finally, based upon our total outrage of the vexatious statements set forth within this proposed letter agreement, Alpine herein serves notice of our unwillingness to execute such a document with CoBon. Further, it is difficult to ascertain your true intent of this letter agreement when reference is made to the need of yet another agreement with Robena, L.L.C. (Robena) which could be terminable at any time without cause and without notice.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark J. Rodak". The signature is fluid and cursive, with the first name "Mark" being the most prominent.

Mark J. Rodak
President

MJR:bas

Tab K

Alpine Coal Company, Inc.
3920 Market Street
Camp Hill, Pennsylvania 17011

FACSIMILE TRANSMISSION SHEET

DATE: MAY 19, 1998 TIME: 10:30 am (EST)
TO: COBOW ENERGY AT FAX: 801-566-0089
ATTN: STEVE NASH PAGES: 3 (Including cover)
FROM: MARC RODRIG FAX #: (717)730-9416

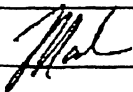
The original of this transmitted document will be sent by:

☐ Regular Mail

☐ Overnight Mail

☐ This is the ONLY form of delivery of this document

MESSAGE: FOLLOWING IS THE EXECUTED LETTER OF
UNDERSTANDING.



THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify this office at (717)730-9412, and return the original message to the above address via the U.S. Postal Service. Thank you.

END

CE004977

MAY-18-98 13:44 FROM: ICPE

ID: 8015660088

PAGE 2

**CoBon Energy, L.L.C.***1145 East South Union Avenue**Mulvane, Utah 84047**Telephone: (801) 255-6666**Fax: (801) 566-0088*

May 18, 1998

Mr. Richard Visovsky
AGTC, Inc.
7 Oakwood Way
Robbinsville, NJ 08691

Mr. Mark Rodak
Alpine Coal Co., Inc
3920 Market St.
Camp Hill, PA 17011

Mr. Mark Rodak
Mr. Richard Visovsky
Viron Energy
3920 Market Street
Camp Hill, PA 17011

Re: Robena Coal Fines Acquisition

Dear Mark and Rick:

This Letter of Understanding is a follow up to my discussion with you relating to the ongoing need the Robena Project ("Project") has for suitable coal fines to be utilized in the start up phase and until the wash plant is constructed and operating. Specifically, we have discussed a proposed arrangement between Robena, L.L.C. and Viron Energy ("Viron") regarding the acquisition of such fines, which is summarized as follows.

Robena, L.L.C. ("Robena") will hereafter enter into a consulting agreement for Viron's reasonable and necessary assistance and consultation in identifying, evaluating, and obtaining raw material resources suitable for the Project, including, without limitation, processed or other coal fines. Viron will be paid a consulting fee for its assistance in identifying, evaluating, and obtaining such raw material resources to be purchased by Robena or its assigns. Robena will pay Viron a consulting fee in the amount of \$3,750 per week commencing retroactively to May 1, 1998. Viron will be responsible for all out-of-pocket and other expenses and any overhead incurred by Viron incident to Viron's performance of the foregoing services. The consulting agreement will be terminable for cause by Robena upon thirty days advance written notice.

As discussed, and notwithstanding your May 13, 1998 letter, CoBon Energy, L.L.C. ("CoBon") reserves its rights under CoBon's November 1, 1996 Consulting Agreement with AGTC, Inc. and Alpine Coal Co., Inc. regarding the scope of consulting services to be provided thereunder relative to the Project. If the proposed consulting agreement terms are acceptable, please acknowledge your consent thereto in the space provided.

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AGTC, INC.

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Mr. Mark Rodak
Mr. Richard Visovsky
May 18, 1998
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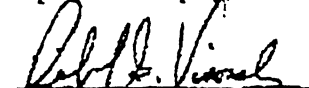
below. Upon receipt of a copy of the signed acknowledgment, I will take steps to obtain Robena's consent to the proposed terms and to coordinate with Robena for the forwarding of the consulting fee payment for the initial four weeks in the amount of \$15,000.

Cordially,


Steven R. Nash
President

ACKNOWLEDGMENT


Mark J. Rodak, President
Alpine Coal Company, Inc.


Richard G. Visovsky, President
AGTC, Inc.

Tab L

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CoBon Synfuel No. 2, L.L.C.

*1145 East South Union Avenue
Suite 100
Midvale, UT 84047
Telephone (801) 255-5545
Fax (801) 255-5661*

June 25, 1999

Via Overnight Mail

Mr Robert Dulebohn
Providian Financial Services
201 Mission Street
San Francisco, CA 94105

Re: Response To Proposed Management Change For Robena L.P.

Dear Rob:

This letter is in response to your recent submission of the Palmer Management Corporation ("Palmer") management services agreement to CoBon Synfuel #2, L L C , as General Partner of Robena L.P ("Synfuel" or "GP"), and our various telephone conference calls earlier this month relating thereto. As we have discussed and as referenced herein, Synfuel has concerns with your proposal that Synfuel retain Palmer, including the need for, terms, timing and scope of the services. Notwithstanding its concerns and in accordance with your directives, Synfuel and Viron Energy, LLC ("Viron") representatives recently met with Mr. Gordon Deane of Palmer to review current operational issues and transition related concerns. Incident to Synfuel's evaluation of your proposal, this letter is to advise you of general issues and concerns underlying Synfuel's objection to the proposal as stated and to identify areas where Synfuel believes the resources of Palmer may be effectively employed.

I. Background

Since assuming, albeit reluctantly, the role of general partner for Robena L.P. in late June 1998, Synfuel has managed the day-to-day operations of the Robena Project (the "Project") consistent with the directives of Providian Financial Services, the Limited Partner ("LP"), and in accordance with the Limited Partnership Agreement. Synfuel has relied upon the expertise of outside consultants and resources. Subject to your review and approval, the GP has also

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necessarily made many difficult decisions under unforeseen and very dynamic circumstances during the initial twelve months of Project operations. In connection with our periodic status reports, Project status and operations, as well as production, operation and financial information, including reports prepared by the GP, have been reviewed by the Partners. At the time of the Partnership Review Meeting last fall, and in addition to indicating that the format of the quarterly reports was acceptable, the LP requested that it not be overrun with the details of the day-to-day operations of the Project, and reiterated that the GP continue to focus on the wash plant construction effort. Subsequently, the GP continued to manage and to report to the LP concerning the Project consistent with your instructions. Though detailed in nature, GP's communications have been focused on the major issues, and have, in each instance, included reference to both positive and negative Project developments.

Though production levels have been much less than anticipated and, frankly, less than hoped for by the Partners, considerable progress has been made from a management and operational standpoint during the first twelve months of operations. Various plant operational issues have been addressed, several equipment modifications and enhancements have been implemented, numerous labor and personnel concerns have been resolved and cost saving measures have been adopted. The Project manufacturing process, utilizing new and relatively untested (i.e., on a large scale) technology, continues to be refined and the management techniques associated therewith are being fine tuned. Synfuel has learned that projects of this nature are very unique and site specific and has endeavored to apply a customized management approach to meet the unique demands of the Project. While Synfuel has shared your concern with start up problems, production delays, equipment failures/breakdowns, funding delays, labor problems and less than hoped for production levels, Synfuel has also appreciated your support, confidence and approval. Despite production setbacks, however, Synfuel's primary effort has been and continues to be to produce a high quality product from available (i.e., less than ideal) limited interim feedstock. To this end, Synfuel has been and is very encouraged by the progress to date under what have been extremely challenging circumstances. For example, Synfuel believes that the quality of product currently manufactured at Robena is superior to most others in the marketplace in terms of pellet strength, stability and consistency. Synfuel believes the worst is behind the Project and once the wash plant construction is completed and raw materials from the plant are consistently available, operational efficiency, production and feedstock quality will improve resulting in a more marketable product.

II. Concerns Re Palmer Management Directive

Given the foregoing background and what has been acknowledged as a difficult startup period from a management perspective, Synfuel was surprised to receive the Palmer proposal from you. Notably, the proposal was received without prior indication of management dissatisfaction by the LP and was presented as a directive from the LP. Moreover, based upon an initial review thereof, the proposal effectively eliminates Synfuel's management role, yet

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continues to place financial and general partner responsibility and liability on Synfuel on a go forward basis for decisions of others and beyond its control. Further, the proposal, if pursued, leaves Synfuel in the position of having to function as the general partner without any means of financial support or reimbursement for its time. As you recall, Synfuel originally agreed to serve as a general partner without a stated compensation only at the insistence of the I.P and with assurance from the LP that a compensation arrangement such as has been utilized over the past twelve months would remain in place during Synfuel's tenure as the general partner. For these and other reasons, it seemed to us that a formal removal of Synfuel as the general partner made the most sense under these circumstances and we so indicated this reaction during our conference call on June 3, 1999.

A. Objection To Terms of Palmer Proposal. Since our initial conference call and as briefly discussed, Synfuel has carefully reviewed the proposal and has weighed the interests of the Partnership and the LP in light of the proposal and in the context of Synfuel's knowledge of Project status and developments. Synfuel does not believe entering into the proposed management services agreement is advisable or appropriate for the reasons set forth herein and as previously discussed. Nevertheless, given your apparent decision to proceed with the Palmer proposal despite Synfuel's concerns, we would advise you of the following specific concerns relative to the proposed agreement:

1. The proposed five (5) year term of the proposed agreement is unacceptable. All service vendors and/or consultants retained to date by or on behalf of the Project, including operations support, engineering, accounting, legal, marketing, etc. have been retained on an at-will basis at market rates. Palmer has indicated an unwillingness to work under such short term and at-will conditions, yet Synfuel believes the Project must retain the unrestricted ability to control management of the Project so as to respond to future developments or issues as deemed appropriate by the GP. In the course of our recent meetings with Palmer, Palmer has suggested that it would agree to an initial term of one (1) year, terminable for cause. If this is the direction you go on this proposal, cause should be liberally defined to allow flexibility. We do not believe an automatic renewal is advisable, but feel the management issue should be reconsidered, at least, at the end of the initial term and that compensation issues be addressed in the context of production levels achieved and development problems in existence at the time. Palmer should not be allowed to lock up the management of the Project. Sufficient incentive exists for Palmer to work from year to year, thereby earning the right to continue in future terms.

2. The monthly minimum fee of \$10,000 is acceptable, provided that the term of the agreement is limited. However, the \$1 per ton of sales fee is excessive. During our recent meeting with Palmer, Palmer suggested that it would accept a fee less than \$1 per ton and that it would furnish a counteroffer. No such communication, however, has been received to date. We believe that the I.P's interest in an incentive based fee structure is sound, particularly with an outside management agent, however the schedule needs to be graduated and reflect the natural

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manufacturing learning curve and design efficiencies that are currently in place, as well as production levels currently anticipated as the feedstock quality is improved and as quantity becomes more readily available. In other words, Palmer should not benefit from an inherent design based production level above which he does not add any marginal utility (i.e., only management related efficiencies should be rewarded). As you know, the issues of long term quality control and marketability have always been primary concerns of this Project, given the marketing concerns of Consol and third parties. Synfuel is concerned that implementation of a production incentive schedule, without due regard to the inherent design, quality and marketability issues, will result in an inferior product, reduced price and decreased marketability. To this end, once the wash plant is operational, margins achieved from the unique plant design should not be diluted through a fee per ton management compensation formula.

3. The indemnification provisions should require greater accountability and responsibility. Best reasonable efforts is acceptable, however, in the event of negligent performance on the part of Palmer, termination and indemnification rights should be triggered. A negligence standard should be imposed. Palmer's proposal of a gross negligence standard is unacceptable. A gross negligence standard is suitable for Synfuel as the general partner given its financial interest as the seller of the Project. Palmer has no such incentive. In fact, given its interests in other projects, Palmer may not always have the interests of the Project at heart in terms of marketing the product, and in obtaining feedstock from competitive sources and at competitive prices. Moreover, a gross negligence standard in the hands of a contract manager such as Palmer gives the GP little or no room to operate if a grossly negligent action or inaction occurs at the management level.

4. Non-competition and confidentiality clauses need to be clearly stated. Strict confidentiality must be maintained by Palmer regarding all aspects of the Project. The principals of Palmer have conflicts of interest that may directly or indirectly affect the Project and the affiliates of Palmer have various interests which may be viewed as conflicting (i.e., Pelletco, Coalco, etc.). For example, by virtue of Pelletco's placement of agglomeration facilities in locales near this Project, the potential for interference and competition regarding feedstock and marketability already exists. Care should be taken to preserve and protect market position carefully. Notably, Maple Creek Mining is a direct competitor of Consol, which certainly will interfere with an effective management relationship between Palmer and Consol.

5. The agreement should be mutually terminable for cause with an opportunity to cure if it is other than at-will. If it is an at-will arrangement, care should be taken to draft the agreement so as to require at least a 60 day advance written notice of termination for both parties.

6. The proposal should be governed by the laws of the State of Utah, the domicile of the GP, whose duty it may be to enforce or to defend a suit under the agreement.

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7. CoBon Energy, LLC is not a proper party to the agreement and has no involvement whatsoever in this transaction.

Synfuel understands from communications with Palmer that Maria Gray is already negotiating the terms of the proposed agreement. To the extent these items have not been considered, Synfuel believes they need to be included in the negotiations.

B. Objection To Timing Of Changed Management Proposal. Synfuel believes management change at this time is ill advised. The presence of a union labor force presents many unique and diverse challenges which are best dealt with by a stable and consistent management team. Business and working relationships have been painstakingly developed over the course of the past twelve months with Consol management, union operating personnel, MSHA, Pond Reclamation management, local vendors, etc. Consol's trust, confidence and respect have been hard earned given the very difficult manufacturing environment posed by the Project. Viron's role as a consultant and liaison to Consol was critical to the Project's startup and continues to be a vital link in the chain. A change in management at this early stage of the Project, perceived or otherwise, could be fatal to the Project.

For example, the Private Letter Ruling ("PLR") requires that certain modifications be made to the Marketing and Lease Agreements ("M&L Agreements") currently in place with Consol. The GP and Viron have had verbal discussions with Consol regarding modifications to the M&L Agreements. As you know, while Consol has not expressly agreed to any specific language modifications, it has conceptually agreed to the required changes. Draft language which Synfuel believes will satisfy the PLR requirements has been prepared and submitted to the Partnership's tax counsel for approval. The GP believes that Consol's willingness to modify the M&L Agreements will depend upon the strong relationship that exists between Viron and Consol. Synfuel believes the removal or replacement of Viron may result in Consol being unwilling to modify the M&L Agreements thus precluding the Project from meeting the PLR requirements.

By way of further example, the union labor force employed by Consol at the Project is predominately an older and mature workforce, which is well versed in their collective bargaining agreement and past work practices at the site. Since start up, the union has repeatedly and arbitrarily exerted its power to establish a position regarding personnel, job requirements, safety and operating procedures. As you know, this problem is compounded by the fact that Consol and the union have an adversarial relationship. Consol works extremely hard to avoid setting Project precedents that might impact costs at its existing operation. The GP (through its consultants) has endeavored to build a trusting relationship with the union while remaining sensitive to the concerns of Consol. The GP believes that removing or replacing its consultants (particularly Viron) will result in a significant set back in the Project's union relations.

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C. Concern Re Consol's Retaliatory Response To Management Change. At a meeting held on June 11, 1999 with Consol, the possibility of replacing the current management (and consultants) with Palmer was conceptually and briefly discussed. Consol's reaction was one of complete surprise and strong, vocal opposition. Consol indicated that such a change would result in the immediate issuance of a 90 day notice to terminate the Lease Agreement. Consol reiterated that a central condition of Consol's support for the development and operation of the Project was its relationship with Synfuel (specifically Viron's representatives) and its understanding that these parties would stay actively involved for the life of the Project. The current management has established a good working relationship with Consol and Consol has expressed its desire to sustain this relationship. The GP believes that the proposed management change presently proposed by the LP could result in termination of the Consol agreements.

D. Concern Re Diminished Quality Assurance Under Proposed Management Change. As you know, very few of the twenty four (24) coal agglomeration plants utilizing the Covol Technologies Inc. ("Covol") proprietary binder and manufacturing processes are attaining proforma production levels. The reasons are many and have been well-documented. Covol has been active in trying to address this issue which has been uniformly raised by many of the projects. This Project is no exception. Months of operational training by trial and error, use of many different types of coal feedstock (i.e., varying size distribution/sulphur/ash/btu levels), working with a limited availability of feedstock, experimentation with various moisture levels, die configurations and additives, and various other operational enhancements have unfortunately resulted in limited production at the Project. Nevertheless, through the months of research and operational refinement, the Project is currently producing a high percentage (95% plus) of good quality pellets from the available interim feedstock. These pellets are marketable and generally meet the expectations and representations of the Project. In short, it has taken a long time to develop the practices and procedures needed to achieve this level of quality. The GP is very concerned that Palmer will sacrifice pellet quality for production based upon the implementation of techniques from dissimilar manufacturing facilities, which could negatively impact the long term market for pellets produced from the Project.

III. Recommendations

Synfuel believes the Partnership can adopt one of several options at this point.

OPTION 1 -- The Partnership can continue to utilize Synfuel to manage the day-to-day operations of the Project. Synfuel, through its various outside consulting/management agreements, has spent considerable time and resources to develop and acquire knowledge of all aspects of Project operations during the first year of operations and has made notable progress in refining the processes to produce a quality product. Synfuel believes the Project remains viable and that production levels anticipated are still possible once the feedstock issues are resolved by virtue of the wash plant construction or otherwise. Synfuel is willing to continue to manage the

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Project on the existing terms of the Limited Partnership Agreement. Under this option, a reevaluation of the compensation structure with the current consultants remains feasible to the extent such appears necessary and is agreeable to said consultants.

OPTION 2 -- The Partnership can remove Synfuel as the general partner and substitute Palmer, Viron or another suitable candidate as the general partner.

OPTION 3 -- The Partnership can effectively or constructively remove Synfuel as the general partner and press forward with its present directive that Palmer manage all aspects of the Project. Synfuel would maintain a .01% interest in name only and be functionally uninvolved in any decision making and would be functionally without authority to perform any general partner duties and responsibilities.

OPTION 4 -- The Partnership can continue to utilize Synfuel as the general partner with Palmer providing specified consulting services as needed and directed by Synfuel with the input and advice of the LP as contemplated under the Limited Partnership Agreement. This alternative would retain the best resources available from Synfuel and would seek to integrate the best resources that Palmer has to offer. Final decision making authority would continue to reside with Synfuel subject to the terms of the Limited Partnership Agreement and Palmer would function as a consultant. At this point, Synfuel believes Palmer's resources may be well suited to the performance of the following services:

- Manage All Bookkeeping, Accounting, Tax and Reporting Issues (per governing agreements)
- Manage Tax Return Preparation and Related Compliance Issues
- Manage Insurance
- Manage Wash Plant Construction
- Manage LLC and Ltd. Partnership Compliance Issues
- Manage Other Assigned Duties and Responsibilities
- Consult re Project Operations
- Consult re Selection of Vendors/Service Providers
- Consult re Marketing/Raw Materials Acquisition

Under this option, the current responsibilities of Synfuel would be reassigned as indicated. Synfuel would, through its current consultants, continue to manage the Consol relations (i.e., interface with union officials and management), on site production and manufacturing activities, feedstock acquisition and marketing. As the wash plant comes on line, feedstock acquisition and marketing roles will be decreased, if not discontinued altogether. Obviously, the current consultant compensation arrangements will need to be revisited (i.e., revised budget prepared) based upon the division of management responsibilities with Palmer. Likewise, the Palmer compensation proposal would have to be modified to reflect the actual division of

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responsibilities. Under this scenario, Synfuel would continue to play a meaningful role in the Project and would have a means of being paid for its time as originally contemplated by the parties, albeit with the continued understanding that such expenses are expected to decrease over time.

In conclusion, Synfuel believes that either Option 2 or Option 4 are the only viable alternatives under the present circumstances. I will look forward to your return from vacation and an opportunity to discuss the foregoing concerns in greater detail.

Thank you for your attention to this matter.

Cordially,



Steven R. Nash

Tab M

CoBon Synfuel No. 2, L.L.C.

1145 East South Union Avenue
Suite 100
Midvale, UT. 84047
Telephone: (801) 255-5545
Fax: (801) 255-5661

July 1, 1999

Mr. Gordon Deane
Palmer Management Corporation
13 Elm Street
Suite 200
Cohasset, MA 02025

Re: Robena Project Contacts and Information

Dear Gordon:

Providian Financial Services, the Limited Partner of Robena LP ("LP"), has directed that CoBon Synfuel #2, L.L.C., the General Partner of Robena LP ("GP") contract with Palmer Management Corporation ("Palmer") to provide management services for the Robena pellet plant and wash plant located at the Consol-Robena preparations plant in Greene County, Pennsylvania ("Project"). The GP is in receipt of your fax transmission dated June 25, 1999. Please understand the information you have requested and the information contained herein is proprietary and is being provided to you in anticipation that a management contract will be finalized shortly. All information provided is strictly confidential and this letter reconfirms your agreement to treat the subject information as such. In anticipation of the parties finalization of the foregoing contract, the GP has prepared this letter to identify and disclose significant tasks and associated responsibilities as related to the operation and management of the Project which Palmer may hereafter assume.

Consol -- Operator Representative:	Rick Shaw State Route 7, US 19 PO Box 100 Osage, WV 26543 (304) 983-8503
Consol -- Robena Preparation Plant Manager:	Darrell Smith R.D. #1 Greensboro, PA 15338 (724) 966-8611
Consol -- Project Supervisor:	Dave Rufft R.D. #1 Greensboro, PA 15338 (724) 966-5634

The Project can be contacted at the following:

1. Operator Control Room: (724) 966-9055

Mr. Gordon Deane
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2. Office Trailer: (724) 943-4126
(724) 943-4154 FAX
robena@alltel.net email

Administrative Assistant: Tracy Byrne
(724) 943-4126

Tracy is an employee of ICPE, presently contracted specifically for location at the Project office trailer. Her duties include, but are not limited to:

1. Report daily operations of the Project, including hours running, daily pellet production, down time and associated problems, etc.
2. Document incoming raw material coal fines delivered to the Project.
3. Document outgoing coal pellets removed from the Project.
4. Answer telephones and provide an on site presence for Robena, L.L.C.
5. Prepare daily production reports.
6. Coordinate testing of raw material coal fines and coal pellets for BTU content.
7. Coordinate sampling for significant chemical change testing.

It is anticipated that Palmer will determine the need to continue using the services of Tracy. If necessary, Palmer will hire or contract directly for her services.

Samples of raw material coal fines and final coal pellets produced are tested on a regular basis by Commercial Testing & Engineering Co. ("CTE") to establish the BTU content, moisture, ash, and sulfur levels for sales and tax credit computation purposes.

The contact at CTE is: Bill Smith
(724) 483-3549

Palmer will determine the need to continue using the services of CTE. If necessary, Palmer will contract with CTE or another suitable testing company for these services.

Samples of raw material final coal fines and final coal pellets produced by the Project are tested quarterly by Combustion Resources, LLC to establish the existence of a significant chemical change.

The contact at Combustion is: Craig Eatough
(801) 370-0654

It is anticipated that Palmer will determine the need to continue using the services of Combustion. If necessary, Palmer will contract with Combustion or another suitable testing company for these services.

As you are aware and as we discussed and explained in our meeting on June 16, 1999, the Project has and is expected to continue to experience operation problems until full production is attained. Many of the problems have been solved with changes in operation, redesign and construction of modified facilities, etc. Solving many of the problems has also involved telephone calls, site inspections, meetings, etc., involving equipment manufacturers and technical service assistance. The majority of this work has been performed, overseen and coordinated by Shawn Reddington at ICPE. In addition, Shawn has been involved in the wash plant design and construction to date. Specific duties Shawn has performed include, but are not limited to:

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1. Upgrades/modifications to the Project to improve pellet production.
2. Implementation and monitoring of an additive testing program to enhance pellet quality.
3. Technical support.
4. Construction management.
5. Evaluation and coordination of thermal dryer adjustments.
6. Mitigation of dust/emission problems.
7. Coordination of permits and registration.
8. Procurement of wash plant equipment.
9. Coordination of utility services.
10. Administrative assistance.

The contact at ICPE is: Anton Tonic
1145 E. South Union Avenue
Midvale, UT 84047
(801) 255-1111

It is anticipated that Palmer will determine the need to continue using the services of Shawn and ICPE for engineering/operational support. If necessary, Palmer will hire or contract directly with ICPE for these services.

In order to maintain a local presence at the Project with the superintendent, the operators, the Owner Representative, as well as to acquire raw material coal fines, sell pellets produced, etc., the Project has contracted the services of Viron Energy, L.L.C. ("Viron").

The contacts at Viron are: Richard Visovsky (609) 779-5313
Mark Rodak (717) 730-9412
3920 Market Street
Camp Hill, PA 17011

The services provided to date by Viron include, but are not limited to, the following:

1. Conduct biweekly status meetings at the Project with Consol management. Viron, on behalf of the GP, has developed a good working relationship with Consol's Robena management, which is believed to be essential to the success of the Project.
2. Maintain day-to-day contact with Consol's operation personnel at the Project.
3. Maintain involvement with UMW union relations with pellet plant employees and intercede in Project union disputes to bring resolution.
4. Intercede in all Project regulatory agency inspections inclusive of the Pennsylvania Department of Environmental Protection and MSHA.
5. Ongoing review all Project regulatory permits for compliance.
6. Review, attend meetings, and assist with coordination between engineers and material suppliers for the coal fine processing plant design, equipment selection and performance requirements.

7. Prepare monthly status reports for the Project regarding materials handling, union issues, fines availability, marketing efforts and processing plant updates.
8. Meet with Pond Reclamation on a monthly basis to discuss project status.
9. Coordinate all local trucking and other services, including earth moving contractors, to be provided directly for the GP. Services have also included coordinating shipments directly to customers.
10. Locate sources of, negotiate the purchase orders for and arrange the transportation of all feedstock for the Project.
11. Arrange all pellet sales to customers and develop new markets.
12. Maintain a working relationship and support of Consol's Research and Development Department.
13. Provide a knowledge of reputable engineering/consulting firms and general contractors in the geographic area of the Project.
14. Continuous involvement in the development of the Project since conception.
15. Hold ongoing discussions and meetings and are prepared to resolve the final two issues involving the PLR, once the legal documents are approved by OHS and Providian consistent with verbal discussions of the parties..
16. Maintain senior management contact with Consol, which includes 16 years of experience working with Consol.
17. Assist in determining the feasibility of the present modification that the GP is undertaking at Consol's Preparation Plant to extract fines on a conveyer system.
18. Coordinate the preliminary logistics and negotiations for the supply of coal from Consol to the Project using the conveyor system currently under construction.
19. Negotiate on a preliminary basis, for additional raw pond fines to be used as beneficiation plant raw feedstock from three (3) sources within a 15-mile radius of the Project totaling approximately three (3) million tons.
20. In the event Consol declines to sell the pellets produced, develop and maintain contact within a market base to sell the pellets produced.

It should be noted that Consol agreed to let the Project be developed only after the following six stipulations were agreed to by Viron:

1. The Project could not negatively impact the operation of the current Robena plant.
2. The Project could not incite union labor problems.

Mr. Gordon Deane
July 1, 1999
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3. The Project must make economic sense for Consol.
4. Consol must control the product produced.
5. Viron must be involved with the Project on a long term basis to interact with Consol.
6. The Project must gain control of Pond No. 4 from Pond Reclamation and assist in settling the dispute between Consol and Pond Reclamation.

The individuals at Viron have 48 years of combined eastern coal experience in engineering, operations, regulatory compliance and sales. Viron has made a specific commitment to insure the success of the Project and is willing to take on additional responsibility if necessary.

It is anticipated that Palmer will determine the need to continue using the services of Viron for some or all of the services currently being provided. If necessary, Palmer will hire or contract directly with Viron for its services.

Legal services required to date have been provided by Hill, Johnson & Schmutz, P.C.

The contact is: Kelly Nash
(801) 375-6600
3319 N. University Avenue, Suite 200
Provo, UT 84604

It is anticipated that Palmer will determine the need to continue using the services of Hill, Johnson & Schmutz for legal support. If necessary, Palmer will hire or contract directly with Hill, Johnson & Schmutz for its services.

Accounting services performed to date have been provided by Mantyla, McReynolds and Associates.

The contact is: Don Mantyla
(801) 269-1818
5872 South 900 East, Suite 250
Salt Lake City, UT 84121

It is anticipated that Palmer will determine the need to continue using the services of Mantyla. If necessary, Palmer will hire or contract directly with Mantyla for its services.

When transportation is required, raw material coal fines are delivered to the Project and final pellets are removed from the Project by D. Kovach Trucking.

The contact is: Dave Kovach
R.D. #1, Box 1508
Greensboro, PA 15338
(724) 943-4869

It is anticipated that Palmer will determine the need to continue using the services of Kovach. If necessary, Palmer will contract directly for their services or contract with another trucking company.

The Project has utilized the services of Jacobs Distributors for pellet mill dies and related equipment.

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The contact is: Phillip Koesters
P.O. Box 727
Harlan, IA 51537
(712) 755-3131 or
(800) 861-2005

It is anticipated that Palmer will determine the need to continue using the services of Jacobs. If necessary, Palmer will contract directly for its services.

The Project has contracted with Walter N. Heine and Associates to provide permitting assistance. Heine has recently prepared and submitted to MSHA a Ground Control Plan for Pond No. 6 at the Robena site (copy attached). Additional Plans (for Pond No. 4), permit compliance issues, etc., are anticipated in the future.

The contact is: Walt Heine or
Brian Fishbach
144 S. Hanover Street
Carlisle, PA 17013
(717) 258-5114

It is anticipated that Palmer will determine the need to continue using the services of Heine. If necessary, Palmer will contract directly for its services.

Golden Eagle Technical Services ("GETS") is under contract to design the wash plant. Costs expended to date are in excess of \$370,000.00. Engineering is presently on hold until Providian selects which option to pursue for construction of the wash plant. The GP has recommended that the Project proceed with the construction of the wash plant utilizing the Farnham & Pfile (F&P) turnkey proposal. Since GETS has process design responsibility, the GP recommends that it remains in a project management role to insure that F&P's design complies with the flow sheet as well as overseeing the start up of the plant.

The contact person at GETS is: Dan Permentor
HC 59 Box 485
Craigsville, WV 26205
(304) 742-6000

It is anticipated that Palmer will continue using the services of GETS. If necessary, Palmer will contract directly for its services.

Insurance is presently provided by William Gallagher Associates. The annual premium for the next year from July 1, 1999 to June 30, 2000 is due shortly. We have enclosed a completed Y2K Questionnaire from Gallagher which Palmer will need to forward to Gallagher.

The contact at Gallagher is: Robert Bothwell or
Holly Willis
200 State Street
Boston, MA 02109
(617) 261-6700

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It is anticipated that Palmer will determine the need to continue using the services of Gallagher. If necessary, Palmer will contract directly for its services.

A front end loader was initially leased from L&J Equipment for use at the Project to move and load coal fines and final pellets. The front end loader lease was converted into a purchase agreement in March of 1999. Currently, a \$20,000 payment is due and an additional \$30,000 is due at \$10,000 per month over the next 3 months to pay off the balance of the purchase price.

The contact at L&J Equipment is: Debbie
(724) 277-8282

A quarterly payment (for the second quarter of 1999) of \$125,000.00 is due and payable to Pond Reclamation, Inc. in July, 1999. Palmer will need to ensure that this payment is made in a timely manner.

The contact at Pond Reclamation is: Debbie
(724) 277-8282

Allegheny Power provides electrical service to the Project. The Project currently has an Electric Service Agreement in place for the pellet plant (copy attached) and Allegheny Power has recently submitted an Electric Service Agreement for the wash plant to the GP for signature (copy attached). A new (and separate) metering point will have to be constructed by Allegheny Power to service the wash plant.

The contact at Allegheny Power is: John Rutkowski
103 Brian Drive
Beaver, PA 15009
(724) 728-8886

It is anticipated that Palmer will finalize the Electric Service Agreement for the wash plant.

Columbia Gas of Pennsylvania is currently supplying natural gas to the Project at standard tariff rates. Due to the limited and inconsistent use of the thermal dryer to date, the GP has not pursued a gas supply contract. However, as production is ramped up and the demand for gas increases, the Project should pursue a gas supply contract as well as finalize the gas transport contract with Columbia.

The contact at Columbia Gas is: Norm Teaford
82 West South Street
Uniontown, PA 15401
(724) 425-7112

It is anticipated that Palmer will pursue the above-referenced contracts as they see fit.

D. Kovach Trucking has proposed leasing new Volvo off-road 35 ton trucks for hauling the cleaned coal fines from the wash plant to the pellet plant. In addition, Kovach has proposed to lease any additional loaders required by the Project.

The contact at Kovach is listed above.

Mr. Gordon Deane
July 1, 1999
Page 8

It is anticipated that Palmer will determine whether or not the Project will pursue a lease with Kovach.

Project Status

The Project currently has a very limited supply of feedstock and thus production levels have been low. However, when operating, the pellet plant is currently producing a high percentage (95% plus) of good quality pellets which have exhibited the ability to resist the elements. A sample of the current pellet production (collected June 10, 1999) is enclosed. In addition to the Covol binder, corn starch and naphthanic oil are being added during the pelletizing process. Each pellet mill has been adjusted to operate at the lowest speed acceptable to the manufacturer and is capable of processing 25-35 tph. Construction is underway on a conveyor system within Consol's Robena Wash Plant, which when completed, will provide a source (up to 10,000 tons/month) of clean high quality (12,500 - 13,000 Btu/lb) coal fines (approximately 28m x 100m) for the pellet plant. It is anticipated that the conveyor system will be completed by mid July. At the present time, an agreement with Consol has not been finalized concerning the purchase and sale of the fines, however, Consol has verbally agreed to the following concept: the Project will buy the fines from Consol for a set price, the Project will pelletize the fines without degrading them and Consol will buy the pellets back at the same set price.

Three (3) additional sources of coal fines have or will soon become available to the Project based primarily upon the negotiations and consulting work of Viron:

1. Mather refuse pile - At full production, Mather can provide the Project with 10,000 to 15,000 tons per month of waste (unwashed) coal fines. The Project is currently receiving 250 tons per day of this material at a cost of \$15.00/ton FOB the Project. The material has a heating value of 10,000 Btu/lb +/- 500 Btu/lb. The Project has successfully tested this material in the pellet mills.
2. Mon View - At full production, Mon View can provide the Project with up to 6,000 tons per month of washed coal fines. Mon View, prior to shutting down last winter, had supplied the Project with the majority of its feedstock. They have started their plant back up and feedstock will be available to the Project next week. While no purchase order has been issued, we anticipate the price range will be in the area of \$1.00 per million Btu's FOB the Project. Mon View has indicated that the heating value of this material will be 12,500 - 13,000 Btu/lb.
3. Aloe Coal - At full production, Aloe can provide the Project with up to 6,000 tons per month of washed coal fines. Aloe is scheduled to start up their wash plant next week. In our preliminary discussions with Aloe they have indicated the price will be in the range of \$25-26/ton FOB the Project. Aloe has also indicated that the heating value of their material will be 12,000 Btu/lb +/- 500 Btu/lb.

The four (4) sources of coal fines identified above can provide the Project with 20,000 to 30,000 tons per month of feedstock which when blended properly should produce a 12,000 +/- Btu/lb, 7% moisture product. The project expects to ramp up to these tonnages within the next 60-90 days.

The pellets produced by the Project to date have been sold to the following company's:

1. PBS Coals - sale price: \$12.65/ton FOB the Project.
2. L&J Equipment - sale price: \$12.00/ton FOB the Project.

Mr. Gordon Deane
July 1, 1999
Page 9

3. Dunkard Mining - sale price: \$10.75/ton FOB the Project.
4. D. Kovach Trucking - sale price: \$12.50/ton FOB the Project.

It should be noted that the sale prices above are reflective of pellets with a heating value that averaged 10,400 Btu/lb +/- 400 Btu/lb. The GP expects the sales price of the pellets to increase to reflect the quality (11,500 Btu/lb +/- 300 Btu/lb) of the pellets currently being produced by the Project.

Numerous adjustments/modifications have been made to the thermal dryer and at present all four (4) heating zones and the cooling zone are operating. Dust control has been a critical issue during dryer operations. Air flow and heating temperature have been restricted in order to eliminate visible emissions from the exhaust stacks and a surfactant system has been installed to further mitigate the dust problem. The dryer is currently removing 8-10% moisture from the pellets at a feed rate of 40-50 tph. It is anticipated that some of the air flow and heating temperature restrictions will be removed as production is ramped up.

Photographs of the Project taken June 10, 1999 are enclosed as a reference of the general conditions at the site during Palmer's recent (June 15, 1999) visit to the Project.

The wash plant was placed on hold by the LP in late April after the revised budget figures became available. At that time, most of the equipment had already been purchased and construction had begun. A lengthy evaluation process has been ongoing since the hold was put in place. On May 28, 1999, the GP recommended to the LP that the Project move forward with the construction of the wash plant as proposed by Farnham & Pfile Construction ("F&P"). The F&P proposal utilizes all equipment purchased by the Project in a single building layout. Some additional equipment (pumps, compressors, sieve bends, etc.) will have to be purchased by the Project. We are preparing a detailed cost estimate for the wash plant construction utilizing the F&P proposal and we will forward same to you as soon as it is available.

It should be noted that from the outset of the Project the partners have been committed to utilize the "best available technology" in the wash plant to maximize recoveries. The Project proformas reflected the use of such technology anticipating recoveries in the 40% range. Based upon the original drilling program conducted at Robena, approximately 60% of the total reserves were in the minus 325 mesh size fraction. Thereafter, an extensive investigation was conducted to evaluate technologies with proven abilities to recover coal fines in this size fraction. Multotec of South Africa conducted an on-site pilot testing program of its turbo floatation equipment and then incorporated its test results into the wash plant flow sheet. Multotec's test data indicated an overall recovery in the 40% range when making a product that would meet or exceed Consol's specification.

Both Consol and Pond Reclamation, as Lessors, are familiar with the proposed wash plant flow sheet and are satisfied that "best available technology" is being utilized to maximize their reserves. Further, F&P solicited the services of Barbara Arnold, a Ph.D in mineral processing, to review and comment on the proposed wash plant flow sheet. Upon completing her review Dr. Arnold issued a favorable position paper (copy attached).

Consol currently employs six union operators/mechanics, two foremen and one supervisor to operate the Project. The supervisor is Dave Rufft, who devotes approximately 50% of his time to oversee and direct the Project operations. The six operators and two foremen were hired with the intent of running two shifts; three operators and one foreman per shift, as well as covering for vacations, sick leave, absences, etc. Due to the limited availability of suitable coal fines to date, the Project has not yet implemented a second shift. As a result, Consol has, as much as possible, utilized the extra Project personnel in its Robena preparation plant in order to keep the Project labor costs down. This approach has allowed Consol to keep the Project personnel available to operate the

Mr. Gordon Deane
July 1, 1999
Page 10

Project as needed without having to layoff, hire and train additional personnel. It should be noted that it takes approximately three (3) months to hire a new union operator/mechanic due to the union bidding and transfer procedures.

The Pennsylvania Department of Environmental Protection (PADEP) has issued a Plan Approval Extension (copy attached) to the Project which expires on August 2, 1999. This is the first Extension to be issued to the Project and the PADEP has indicated that it will issue a second four (4) month Extension, if necessary. However, it is our understanding that the PADEP will not issue more than two (2) Extensions. Wash plant construction is still on hold per the LP and at this point, and it appears unlikely that construction can be completed within the second four month Extension time frame. Therefore, this matter will need to be addressed with the PADEP as soon as the wash plant construction schedule is known. We recommend that Walter Heine & Associates be contacted to assist the Project with this matter.

Operating experience over the past year has demonstrated the need to keep the feedstock protected from precipitation, particularly during the winter months. We are soliciting cost proposals to construct a structure(s) which can cover and protect from moisture 5,000 to 10,000 tons of feedstock. We will forward these proposals as soon as we receive them.

Attachments:

1. Ground Control Plan for Pond No. 6.
2. Project Photographs (Taken on 6/10/99).
3. Insurance Renewal Questionnaire, Y2K Compliance Questionnaire, Workers Compensation.
4. Plan Approval Extension.
5. Farnham & Pfile Turnkey Proposal.
6. Viron monthly reports - 5/98 thru 2/99.
7. ICPE Professional Services Agreement.
8. Viron Letter of Understanding and Consulting Agreement.
9. Hill, Johnson, & Schmutz Legal Services Retainer Agreement.
10. Mantyla, McReynolds and Associates Engagement Letter.
11. Golden Eagle Technical Services Engineering Agreement.
12. L&J Equipment Front End Loader Purchase Agreement.
13. Request for PLR letters & follow-up correspondence.
14. Private Letter Ruling.
15. Sample of Pellets.
16. Purchase Orders for coal fines.
17. Purchase Orders for pellets.
18. Electric Service Agreement 98-JWR-07 (pellet plant).
19. Electric Service Agreement 99-JWR-05 (wash plant).
20. Settlement Agreement with Consol
21. Financing Agreement, Assignment and Assumption of Agreement and Consent, and Termination of Assignment Agreement and Consent.
22. Robena, L.L.C. Limited Liability Company Agreement.
23. BankBoston Commercial Deposit Account Resolutions and Authorities and Offline Signature Card.

Mr. Gordon Deane

July 1, 1999

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This should provide you with all of the information requested at our meeting as well as other additional information that we felt was applicable. Please contact us if you have any questions of need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Nash", written over a circular scribble.

Steven R. Nash
Manager

copy: Robert Dulebohn
Mark Rodak
Rick Visovsky

Tab N

CoBon Synfuel No. 2, L.L.C.

1145 East South Union Avenue
Suite 100
Midvale, UT 84047
Telephone: (801) 255-5545
Fax: (801) 255-5661

July 29, 1999

Mr. Robert Dulebohn
Providian Financial Services
201 Mission Street
San Francisco, CA 94105

Re: Unpaid Invoices

Dear Rob:

By way of follow up to your request for a list of as-yet unpaid and owing expenses, which have been previously identified, we have prepared this summary. At your direction and as referenced in our letter to you of July 12, 1999, we have notified the entities listed below that they can expect payment of their past due invoices no later than August 11, 1999 (i.e. 30 days from my communication with these creditors). It should be noted that each of these entities have continued in good faith to provide services to the Project so as not to interrupt operations. However, we cannot expect that they will continue in such capacities beyond the above-referenced date in the event that all past due invoices are not brought current. We have received a disconnection notice from US West (copy attached) for the Robena, L.L.C. general management telephone service and are requesting that this bill be paid immediately to avoid such disconnection.

<u>Entity</u>	<u>Description</u>	<u>Amount</u>
Viron Energy	Coal Fines Acquisition/Project Support	\$ 45,000.00
ICPE	Robena Management/Engineering Support	\$ 30,443.67
Hill, Johnson & Schmutz	Legal Services	\$ 39,750.48
US West	Telephone- Robena General Management	\$ 1,036.29
Golden Eagle Technical Svcs.	Engineering/Design - Wash Plant	\$209,981.50
	TOTAL	\$326,211.94

CE005750

Mr. Robert Dulebohn
July 29, 1999
Page 2

A copy of each invoice is enclosed. Please forward the necessary funding and direct Palmer Management with respect to the issuance of payments at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Nash", written over the printed name.

Steven Nash
Manager

Enclosure
cc: Gordon Deane

CE005751

VIRON ENERGY
3920 Market Street
Camp Hill, Pennsylvania 17011
717-730-9412
Fax 717-730-9416

INVOICE

July 1, 1999

In Account with Robena, L.L.C.

Professional Services:

Re: Robena Project
Greene County, Pennsylvania

For: Fines Acquisition

Purchase Order: Letter of Understanding (LOU) May 18, 1998

Amount Due: \$15,000 00

Terms: Due Upon Receipt
Please make check payable to:

Viron Energy
c/o M. R. International
3920 Market Street
Camp Hill, Pennsylvania 17011

VIRON ENERGY
3920 Market Street
Camp Hill, Pennsylvania 17011
717-730-9412
Fax 717-730-9416

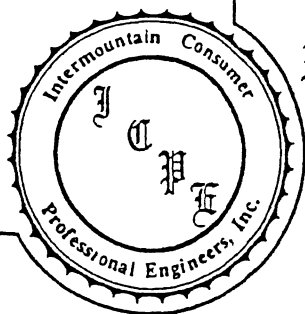
ACCOUNT SUMMARY

July 1, 1999

In Account with Robena, L.L.C.

Invoice (5/01/98)	\$ 15,000.00
Payment (5/20/98) Check No. 1050	(\$ 15,000.00)
Invoice (6/01/98)	\$ 15,000.00
Payment (6/01/98) Check No. 1066	(\$15,000.00)
Invoice (7/01/98)	\$ 15,000.00
Payment (7/01/98) Check No. 1111	(\$15,000.00)
Invoice (8/01/98)	\$ 15,000.00
Payment (8/14/98) Check No. 1140	(\$15,000.00)
Invoice (9/01/98)	\$ 15,000.00
Payment (9/15/98) Wire Transfer	(\$15,000.00)
Invoice (10/01/98)	\$ 15,000.00
Payment (10/02/98) Check No. 1201	(\$15,000.00)
Invoice (11/01/98)	\$ 15,000.00
Payment (11/01/98) Check No. 1229	(\$15,000.00)

Invoice (12/01/98)	\$ 15,000.00
Payment (12/10/98) Wire Transfer	(\$15,000.00)
Invoice (1/01/99)	\$ 15,000.00
Payment (1/02/99) Check No. 1266	(\$15,000.00)
Invoice (2/01/99)	\$ 15,000.00
Payment (2/02/99) Check No. 1283	(\$15,000.00)
Invoice (3/01/99)	\$ 15,000.00
Payment (3/01/99) Check No. 1304	(\$15,000.00)
Invoice (4/01/99)	\$ 15,000.00
Payment (4/01/99) Check No. 1325	(\$15,000.00)
Invoice (5/01/99)	\$ 15,000.00
Invoice (6/01/99)	\$ 15,000.00
Invoice (7/01/99)	\$ 15,000.00
Balance Owning	\$ 45,000.00



Intermountain Consumer Professional Engineers, Inc.

Consulting Engineers
1145 East South Union Avenue
Midvale, Utah 84047

INVOICE FOR ENGINEERING SERVICES

DATE: June 17, 1999

PROJECT: CoBon - Robena Plant Operation and Maintenance; ICPE No. 05-164

TO: CoBon Energy, L.L.C
1145 East South Union Avenue
Midvale, UT 84047

FROM: Intermountain Consumer Professional Engineers
1145 East South Union Avenue
Midvale, Utah 84047

BILLING PERIOD: April 1999

INVOICE 005-164-0499

Project: Robena Plant Operations and Maintenance. This invoice item reflects the costs associated with the project during the billing period. ICPE No. 05-164. This is a partial project billing on the hourly plus expense fee basis as it relates to fiscal year 1999.

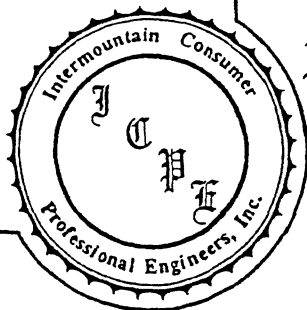
Principal Engineer(s):	0 hrs @ \$83/hr	=	\$.00
Senior Engineer(s):	0 hrs @ \$76/hr	=	.00
Project Engineer(s) I:	88 hrs @ \$67/hr	=	5,896.00
Project Engineer(s) II:	0 hrs @ \$62/hr	=	.00
Design Engineer(s):	26 hrs @ \$52/hr	=	1,352.00
Design Draftsperson:	0 hrs @ \$37/hr	=	.00
Draftsperson I:	0 hrs @ \$34/hr	=	.00
Draftsperson II:	0 hrs @ \$29/hr	=	.00
Secretary:	142 hrs @ \$29/hr	=	4,118.00
Expenses:	Airfare	=	4,723.00
	Travel	=	1,202.17
	Copy and Postage	=	.00
	Project Supplies	=	147.50

Total Billing Period Amount = \$ 17,438.67

INVOICE AGING SUMMARY				
Current	Over 30	Over 60	Over 90	TOTAL AMOUNT DUE (all invoices outstanding)
\$17,438.67	\$0.00	\$0.00	\$0.00	\$17,438.67

- | | | |
|--|---|-------------|
| 1. Total of previous 1999 billings excluding this invoice: | = | \$67,785.06 |
| 2. Total payments received as of the date of this invoice: | = | \$64,785.06 |

CE005755



Intermountain Consumer Professional Engineers, Inc.

Consulting Engineers
1145 East South Union Avenue
Midvale, Utah 84047

INVOICE FOR ENGINEERING SERVICES

DATE: June 17, 1999

PROJECT: CoBon - Robena Project General Management; ICPE No. 06-164

TO: CoBon Energy, L.L.C
1145 East South Union Avenue
Midvale, UT 84047

FROM: Intermountain Consumer Professional Engineers
1145 East South Union Avenue
Midvale, Utah 84047

BILLING PERIOD: April 1999

INVOICE 006-164-0499

Project: Robena Project General Management. This invoice item reflects the costs associated with the project during the billing period. ICPE No. 06-164. This is a partial project billing on the hourly plus expense fee basis as it relates to fiscal year 1999.

Principal Engineer:	132 hrs @ \$83/hr	=	\$ 10,956.00
Senior Engineer(s):	0 hrs @ \$76/hr	=	.00
Project Engineer(s) I:	15 hrs @ \$67/hr	=	1,005.00
Project Engineer(s) II:	0 hrs @ \$62/hr	=	.00
Design Engineer(s):	0 hrs @ \$52/hr	=	.00
Design Draftsperson:	0 hrs @ \$37/hr	=	.00
Draftsperson I:	0 hrs @ \$34/hr	=	.00
Draftsperson II:	0 hrs @ \$29/hr	=	.00
Secretary:	36 hrs @ \$29/hr	=	1,044.00
Expenses:	Airfare	=	.00
	Travel	=	.00
	Copy and Postage	=	.00
	Project Supplies	=	.00

Total Billing Period Amount = \$ 13,055.00

INVOICE AGING SUMMARY				
Current	Over 30	Over 60	Over 90	TOTAL AMOUNT DUE (all invoices outstanding)
\$13,005.00	\$0.00	\$0.00	\$0.00	\$13,005.00

- | | | |
|--|---|--------------|
| 1. Total of previous 1999 billings excluding this invoice: | = | \$ 52,571.24 |
| 2. Total payments received as of the date of this invoice: | = | \$ 52,571.24 |

CE005756

HILL, JOHNSON & SCHMUTZ, L.C.
Attorneys & Counselors at Law
3319 N. University Ave. Suite 200
Provo, UT 84604
801-375-6600

June 15, 1999

Invoice # 16741

Cobon Synfuels, LLC
Robena, LP/Robena, LLC
Attn: Steven R. Nash
1145 East South Union Avenue, #100
Midvale UT 84047

* * * S T A T E M E N T * * *

(Wm. Kelly Nash - Supervising Attorney)

Professional services

		<u>Hours</u>	<u>Amount</u>
5/3/99	WKN Attention to PLR modification issues; follow-up with Greg R. re: same; review power of attorney re: equipment delivery issues.	1.00	185.00
5/5/99	WKN Telephone conference with Greg R. re: document review and approval status; telephone status conference with Steve Nash.	0.50	92.50
5/6/99	WKN Telephone conference with RIN re: equipment rental/purchase; coordinate facilities/equipment inspection for RIN.	0.50	92.50
5/12/99	WKN Office setup issue re: Shawn and filing.	0.25	46.25

	<u>Hours</u>	<u>Amount</u>
5/13/99 WKN Telephone conference with Steve to report re: pending matters.	0.25	46.25
5/18/99 WKN Meeting with SRN to discuss equipment delivery, production and other pending issues.	0.50	92.50
5/26/99 WKN Conference with Steve re: insurance renewal issues and contract issues; follow-up conference with and attention to Shawn Reddington re: assigned matters.	0.75	138.75
5/27/99 WKN Meeting with Shawn R.; telephone conference with Steve; review documents.	1.50	277.50
5/28/99 WKN Meeting with SRN; Shawn R. to report re: status and payment questions.	0.75	138.75
For professional services rendered	6.00	\$1,110.00
Additional charges:		
Faxes Received		2.50
Faxes Sent		4.50
Photocopies		26.55
Total costs		\$33.55
Total amount of this bill		\$1,143.55
Previous balance		\$38,606.93
Balance due		\$39,750.48



www.uswest.com

ANTONE TONC
DBA ROBENA LLC
Bill Date: Jul 16, 1999
Account No: 801-255-5545-271B

Balance Forward	New Charges	Total Amount Due	Due Date for New Charges
\$983.66	\$52.63	\$1,036.29	Aug 6, 1999

Account Summary

▼ Previous Balance	
Charges	983.66
Balance Forward	\$983.66
▼ New Charges	
U S WEST	42.33 ⁵
AT&T	60.75
USBI	34.21
Total New Charges	\$52.63
TOTAL AMOUNT DUE	\$1,036.29

For questions, call:

1-800-603-6000
1-800-325-0138
1-888-481-8724

We appreciate your business.

Any amount left unpaid 30 days after bill date is subject to a 1.2% late payment charge.

Subject to Federal Communication Commission approval, on July 1st the Federal Access Charge for multiline businesses will decrease to \$7.95 per line per month. The Presubscribed Interexchange Carrier Charge (PICC) will increase to \$1.04 for business single line customers and \$4.21 for multiline businesses.

U S WEST, Salt Lake City, UT 84135-0001
Visit us 24 hours a day at www.uswest.com.



For questions, call 1-800-603-6000

Page 2

U S WEST LOCAL SERVICES

▼ ACCOUNT DETAIL

MONTHLY SERVICE CHARGES 81.46
ACCOUNT ACTIVITY 125.49⁵
TAXES 5.40⁵
TOTAL \$49.43⁵

▼ MONTHLY SERVICE

MONTHLY SERVICE - JUL 16 THRU AUG 15 50.44
FEDERAL ACCESS CHARGE 15.90
TELEPHONE ASSISTANCE FUND .20
UTAH UNIVERSAL SERVICE SUPPORT FUND .76⁵
TELECOMMUNICATIONS RELAY SERVICES .36
911 SURCHARGE FOR EXISTING OR FUTURE EMERGENCY SERVICE 1.20
MUNICIPAL CHARGE 2.32
LATE CHARGE ON UNPAID BALANCE OF 983 66 11.80
SUBTOTAL \$81.46

▼ ACCOUNT ACTIVITY

1. PUC CREDIT 124.84⁵
2. NET CHANGE IN MONTHLY BILLING DUE TO RATE CHANGE .65⁵
SUBTOTAL \$125.49⁵

▼ TAX SUMMARY

FEDERAL EXCISE TAX 1.69⁵
STATE TAX 3.71⁵
SUBTOTAL \$5.40⁵

U S WEST LOCAL SERVICES \$49.43⁵

U S WEST LONG DISTANCE SERVICES

▼ ACCOUNT DETAIL

MONTHLY SERVICE CHARGES .06
LONG DISTANCE 6.44
TAXES .60
TOTAL \$7.10

▼ MONTHLY SERVICE

UTAH UNIVERSAL SERVICE SUPPORT FUND .06
SUBTOTAL \$.06

▼ LONG DISTANCE

NO.	DATE	TIME	TO PLACE	TO AREA NUMBER	TYPE	MINUTES	AMOUNT
1	JUN 16	2:36P	PROVO UT	801 319-2086	#D	2.1	.21 [#]
2	JUN 17	2:21P	PROVO UT	801 375-6600	#D	3.0	.30 [#]
3	JUN 18	9:16A	PROVO UT	801 375-6600	#D	2.2	.22 [#]
4	JUN 23	1:58P	PROVO UT	801 375-6600	#D	31.6	3.16 [#]
5	JUL 06	8:35P	PROVO UT	801 375-6600	#E	.5	.05 [#]
6	JUL 07	4:33P	PROVO UT	801 375-6600	#D	3.0	.30 [#]
SUBTOTAL							42.4 .00
CALLS FROM 801 255-5661							
7	JUN 25	8:16A	PROVO UT	801 375-3865	#D	3.5	.35 [#]
8	JUN 25	8:22A	PROVO UT	801 375-3865	#D	.6	.06 [#]
9	JUN 25	4:45P	PROVO UT	801 375-3865	#D	4.4	.44 [#]
10	JUN 25	4:50P	PROVO UT	801 375-3865	#D	.7	.07 [#]
11	JUN 25	6:04P	PROVO UT	801 375-3865	#E	3.1	.31 [#]
12	JUN 28	1:16P	PROVO UT	801 375-3865	#D	1.7	.17 [#]
13	JUN 30	12:24P	PROVO UT	801 375-3865	#D	2.3	.23 [#]
14	JUL 06	9:57A	PROVO UT	801 375-3865	#D	4.8	.48 [#]
15	JUL 14	1:29P	PROVO UT	801 375-3865	#D	.9	.09 [#]
SUBTOTAL							22.0 .00

VOLUME CALLING CONNECTION PLAN CHARGES NOT INCLUDED IN SUBTOTAL
CHARGES SUMMARIZED BELOW

U S WEST LONG DISTANCE SERVICES

▼ LONG DISTANCE

NO.	DATE	TIME	TO PLACE	TO AREA NUMBER	TYPE	MINUTES	AMOUNT
-----	------	------	----------	----------------	------	---------	--------

CALLS FROM 801 255-5661

VOLUME CALLING CONNECTION PLAN SUMMARY							
DAYTIME CALLS						60.8 MINUTES	8.08
EVENING CALLS						3.8 MINUTES	.36
NIGHT/WEEKEND CALLS						.0 MINUTES	.00
TOTAL VOLUME CALLING CONNECTION PLAN							6.44

THANK YOU FOR SUBSCRIBING TO U S WEST LONG DISTANCE SERVICES.

YOUR CALLING CONNECTION PLAN SAVED YOU	\$2.08	
SUBTOTAL	64.4	\$6.44

▼ TAX SUMMARY

FEDERAL EXCISE TAX		.19
STATE TAX		.41
SUBTOTAL		\$6.60

U S WEST LONG DISTANCE SERVICES	\$7.10
--	---------------

Type of Long Distance Calls:
D - Dial Day - Full Rate
E - Dial Evening - Discount Rate





ANTONE TONG
Account No: 801-255-5545-271B
For billing questions, call 1-800-325-0138
For service questions, call 1-800-222-0400

Page 4

CE005762

MOVING? ADDING LOCATIONS? NEED ADVICE ON LONG DISTANCE SERVICE?
CALL AT&T ON 1-800-222-0400.

ACCOUNT DETAIL

ITEMIZED CALLS	58.98
TAXES	1.77
AT&T TOTAL	\$60.75

ITEMIZED CALLS

NO.	DATE	TIME	TO PLACE	TO AREA NUMBER	TYPE	MINUTES	AMOUNT
1	JUN 08	8:56A	HARRISBURG PA	717 730-9412	D	1	.39
2	JUN 09	8:38A	HARRISBURG PA	717 730-9412	D	1	.39
3	JUN 09	9:55A	COHASSET MA	781 383-3200	D	2	.77
4	JUN 09	10:59A	PLAINSBORO NJ	609 799-5313	D	15	5.78
5	JUN 09	12:17P	BOSTON MA	617 261-6715	D	8	3.08
6	JUN 09	2:58P	GREENSBORO PA	724 943-4126	D	1	.39
7	JUN 10	10:10A	JOHNSTOWN PA	814 539-4909	D	25	9.63
8	JUN 10	3:02P	HARRISBURG PA	717 512-9564	D	1	.39
9	JUN 10	3:02P	JOHNSTOWN PA	814 539-4909	D	2	.77
10	JUN 11	7:37A	PLAINSBORO NJ	609 799-5313	D	13	5.01
11	JUN 11	8:02A	HARRISBURG PA	717 512-9564	D	1	.39
12	JUN 11	8:03A	JOHNSTOWN PA	814 539-4909	D	1	.39
13	JUN 11	9:26A	ROANOKE VA	540 772-7763	D	62	23.87
14	JUN 11	10:37A	BELLEVUE VA	724 929-3151	D	3	1.16
15	JUN 11	11:00A	HINTON WV	304 466-2053	D	1	.39
16	JUN 11	11:08A	GREENSBORO PA	724 943-4126	D	9	3.47
17	JUN 11	11:17A	GREENSBORO PA	724 943-4126	D	1	.39
18	JUN 11	11:21A	ROCHESTER PA	724 728-8886	D	5	1.93
19	JUN 11	11:49A	CARMICHAELS PA	724 966-5634	D	1	.39
SUBTOTAL							58.98

AT&T SUBTOTAL OF ITEMIZED CALLS \$58.98

TAX SUMMARY

20 FEDERAL EXCISE TAX		1.77
	AT&T SUBTOTAL OF TAXES	\$1.77
	AT&T CURRENT CHARGES	\$60.75

Type of Long Distance Calls:
D - Dial Day - Full Rate

This portion of your bill is provided as a service to AT&T. There is no connection between U S WEST and AT&T.



USBI

ANTHONY LONG
Account No: 801-255-5545-271B
For questions, call 1-888-481-8724

Page 5

ACCOUNT DETAIL

ITEMIZED CALLS	31.28
TAXES	2.93
USBI TOTAL	\$34.21

ITEMIZED CALLS

MISCELLANEOUS CHARGES AND CREDITS

NO.	DATE	ITEM	TAX CODE	AMOUNT
		LONG DISTANCE SAVING		
1	MAY 27	UNIV SERV FD	00	20.02
2	JUN 11	LD LINE CHG	00	7.17
	JUN 26	UNIV SERV FD	00	4.09
		SUBTOTAL	31.28	
		USBI SUBTOTAL OF ITEMIZED CALLS		\$31.28

TAX SUMMARY

FEDERAL EXCISE TAX	.94
STATE TAX	1.99
USBI SUBTOTAL OF TAXES	\$2.93
USBI CURRENT CHARGES	\$34.21

Tax Code Explanation:
00 - Federal, State and Local Tax Applied

THIS PORTION OF YOUR BILL IS PROVIDED AS A SERVICE TO USBI
THERE IS NO CONNECTION BETWEEN USBI AND U S WEST.

CF005763



ACCOUNT NUMBER: 801-255-5545-271B

U S WEST PAGE 1

* DISCONNECT NOTICE *

OUR RECORDS INDICATE THAT THERE IS A TOTAL PAST DUE AMOUNT OF \$983.66 ON YOUR ACCOUNT. TO AVOID A TEMPORARY DISCONNECTION OF YOUR LOCAL AND/OR LONG DISTANCE SERVICE, FULL PAYMENT MUST BE MAILED IMMEDIATELY TO REACH US BY JUL 15. A RESTORAL CHARGE OF \$20.00 PER LINE AND A SECURITY DEPOSIT MAY APPLY TO RE-ESTABLISH SERVICE.

AS A VALUED CUSTOMER OF U S WEST, YOUR BUSINESS IS APPRECIATED. WE ALSO UNDERSTAND THAT OCCASIONALLY, MAKING A TIMELY PAYMENT ON A MONTHLY BILL CAN BE UNINTENTIONALLY OVERLOOKED. IF YOU HAVE ALREADY MADE FULL PAYMENT, PLEASE DISREGARD THIS NOTICE. IF YOU CANNOT MAIL THE FULL AMOUNT, PLEASE CALL FOR ACCEPTABLE PAYMENT ARRANGEMENTS.

FOR YOUR REVIEW, BELOW IS A BREAKDOWN OF YOUR CHARGES. THOSE SERVICES SUBJECT TO TEMPORARY DISCONNECTION ARE SHOWN IN BOLD PRINT. THANK YOU FOR YOUR PROMPT ATTENTION.

U S WEST	\$256.55
USBI	\$525.76
AT&T	\$194.21
U S WEST LONG DISTANCE	\$17.78
U S WEST UNREGULATED	\$10.64CR

TOTAL PAST DUE \$983.66

CUSTOMER SERVICES
1-800-600-1117 (NO CHARGE).

STATEMENT OF TELEPHONE CUSTOMER RIGHTS AND RESPONSIBILITIES

THE UTAH PUBLIC SERVICE COMMISSION HAS ESTABLISHED RULES ABOUT TELEPHONE CONSUMER AND COMPANY RELATIONSHIPS. THESE RULES COVER PAYMENT OF BILLS, LATE CHARGES, SECURITY DEPOSITS, HANDLING COMPLAINTS, SERVICE DISCONNECTIONS AND OTHER MATTERS. THESE RULES ASSURE CUSTOMERS OF CERTAIN RIGHTS AND OUTLINE CUSTOMER RESPONSIBILITIES.

RETURN U S WEST
ADDRESS SALT LAKE, UT 84135-0001

Please fold on the perforation above, detach and return with your payment payable to U S WEST Communications

ACCOUNT NUMBER: 801-255-5545-271B

TOTAL AMOUNT DUE DUE JUL 15 \$983.66

ANTONE TONC
DBA ROBENA LLC
1145 E SOUTH UNION AVE
MIDVALE UT 84047-2903



U S WEST
SALT LAKE, UT 84135-0001

Enter Amount Paid
(If different from
amount due)



64 06801255554502714 1205071599 000000000000 000009836602

CE005764

RIGHTS**U S WEST WILL:**

PROVIDE SERVICE IF YOU ARE A QUALIFIED APPLICANT.
FOLLOW SPECIFIC PROCEDURES FOR SERVICE DISCONNECTION WHICH INCLUDES PROVIDING YOU A NOTICE POSTMARKED AT LEAST 7 DAYS BEFORE SERVICE IS DISCONNECTED.
PROVIDE YOU WITH INFORMATION ABOUT ASSISTANCE PROGRAMS FOR QUALIFIED LOW-INCOME CUSTOMERS, I.E.; THE UTAH LOW-INCOME TELEPHONE ASSISTANCE PROGRAM (LIFELINE), AND LINK-UP AMERICA PROGRAM.
ALLOW YOU TO DESIGNATE A THIRD PARTY TO BE NOTIFIED IN THE EVENT YOUR TELEPHONE SERVICE IS TO BE DISCONNECTED.
CONTINUE SERVICE FOR A REASONABLE TIME IF YOU PROVIDE A PHYSICIAN'S STATEMENT WHEN A MEDICAL EMERGENCY EXISTS IN YOUR HOME.
PROVIDE YOU WITH WRITTEN INFORMATION ABOUT COMMISSION RULES AND YOUR RIGHTS AND RESPONSIBILITIES AS A CUSTOMER UNDER THOSE RULES.

RESPONSIBILITIES**YOU, THE CUSTOMER WILL:**

USE YOUR TELEPHONE SAFELY AND PAY PROMPTLY.
CONTACT U S WEST ABOUT BILLING OR OTHER MATTERS.
CONTACT U S WEST WHEN YOU ANTICIPATE PAYMENT PROBLEMS, IN AN ATTEMPT TO DEVELOP A PAYMENT PLAN.
NOTIFY U S WEST WHEN YOU ARE MOVING TO ANOTHER RESIDENCE.
NOTIFY U S WEST ABOUT STOPPING SERVICE IN YOUR NAME OR STOPPING SERVICE ALTOGETHER.
PERMIT ACCESS TO YOUR PROPERTY FOR ESSENTIAL U S WEST PERSONNEL AND EQUIPMENT.

-IF YOU HAVE A PROBLEM THAT CAN NOT BE RESOLVED, YOU MAY OBTAIN AN INFORMAL REVIEW OF THE DISPUTE BY CALLING THE UTAH STATE DIVISION OF PUBLIC UTILITIES COMPLAINT OFFICE AT 530-6652 IN SALT LAKE CITY OR 1 800-874-0904, TOLL FREE STATEWIDE.

CALL U S WEST FIRST FOR PROBLEM RESOLUTION:
TO CONTACT U S WEST CALL: 1 800 244-1111(FOR HOME)
OR 1 800 603-6000(FOR BUSINESS).

Golden Eagle Technical Services, LLC
 HC 59 Box 48J
 Craigsville, WV 26205
 (304) 742-6000

Invoice

DATE	INVOICE NO.
04/30/99	990460

BILL TO
Robena, L.L.C. 1145 East South Union Avenue, Suite 1 Midvale, UT 84047

P.O. NO.	TERMS	PROJECT
Verbal	Net 30	

SERVIC...	DESCRIPTION	QTY	RATE	PROJECT/JOB	AMOU...
	PROFESSIONAL ENGINEERING SERVICES FOR ROBENA PROJECT DEVELOPMENT PER CONTRACT DATED MAY 1, 1998.				
04/01/99		8	60.00	R Sr Proc Eng	480.00
04/01/99		9	60.00	R Sr Proc 2	540.00
04/01/99		8	50.00	R Proc Engr	400.00
04/01/99		8	50.00	R Proc Engr 2	400.00
04/02/99		8	60.00	R Sr Proc Eng	480.00
04/02/99		9	60.00	R Sr Proc 2	540.00
04/02/99		8	50.00	R Proc Engr	400.00
04/02/99		8	50.00	R Proc Engr 2	400.00
04/05/99		8	65.00	R Prin Engr	520.00
04/05/99		8	60.00	R Sr Proc Eng	480.00
04/05/99		9	60.00	R Sr Proc 2	540.00
04/05/99		8	50.00	R Proc Engr	400.00
04/05/99		8	50.00	R Proc Engr 2	400.00
04/06/99		8	65.00	R Prin Engr	520.00
04/06/99	Robena 4 Wheel Drive Vehicle	200	0.45	R Vehicle Use	90.00
04/06/99	Travel Expense	1	1.25	Miscellaneous	1.25
04/06/99		8	60.00	R Sr Proc Eng	480.00
04/06/99		9	60.00	R Sr Proc 2	540.00
04/06/99		8	50.00	R Proc Engr	400.00
04/06/99		8	50.00	R Proc Engr 2	400.00
04/07/99		8	60.00	R Sr Proc Eng	480.00
04/07/99		9	60.00	R Sr Proc 2	540.00
04/07/99		8	50.00	R Proc Engr	400.00
04/07/99		8	50.00	R Proc Engr 2	400.00
04/08/99	Rotate 2nd building on-site & e-mail.	1.5	35.00	R Sr Engr Tec	52.50
04/08/99		8	60.00	R Sr Proc Eng	480.00
04/08/99		9	60.00	R Sr Proc 2	540.00
04/08/99		8	50.00	R Proc Engr	400.00
04/08/99		8	50.00	R Proc Engr 2	400.00
04/09/99		8	60.00	R Sr Proc Eng	480.00
04/09/99		9	60.00	R Sr Proc 2	540.00
04/09/99		8	50.00	R Proc Engr	400.00
04/09/99		8	50.00	R Proc Engr 2	400.00
04/12/99		8	65.00	R Prin Engr	520.00
				Total	

Golden Eagle Technical Services, LLC
 HC 59 Box 48J
 Craigsville, WV 26205
 (304) 742-6000

Invoice

DATE	INVOICE NO.
04/30/99	990460

BILL TO
Robena, L.L.C. 1145 East South Union Avenue, Suite 1 Midvale, UT 84047

P.O. NO.	TERMS	PROJECT
Verbal	Net 30	

SERVIC...	DESCRIPTION	QTY	RATE	PROJECT/JOB	AMOU...
04/12/99		8	60.00	R Sr Proc Eng	480.00
04/12/99		9	60.00	R Sr Proc 2	540.00
04/12/99		8	50.00	R Proc Engr	400.00
04/12/99		8	50.00	R Proc Engr 2	400.00
04/13/99		8	65.00	R Prin Engr	520.00
04/13/99		8	60.00	R Sr Proc Eng	480.00
04/13/99		9	60.00	R Sr Proc 2	540.00
04/13/99		8	50.00	R Proc Engr	400.00
04/13/99		8	50.00	R Proc Engr 2	400.00
04/14/99		8	65.00	R Prin Engr	520.00
04/14/99	Robena 4 Wheel Drive Vehicle	200	0.45	R Vehicle Use	90.00
04/14/99	Business Meal	1	22.00	Miscellaneous	22.00
04/14/99	Travel Expense	1	2.50	Miscellaneous	2.50
04/14/99		9	60.00	R Sr Proc 2	540.00
04/14/99		8	50.00	R Proc Engr	400.00
04/14/99		8	50.00	R Proc Engr 2	400.00
04/15/99		8	60.00	R Sr Proc 2	480.00
04/15/99		8	50.00	R Proc Engr	400.00
04/15/99		8	50.00	R Proc Engr 2	400.00
04/16/99		8	60.00	R Sr Proc 2	480.00
04/16/99		8	50.00	R Proc Engr	400.00
04/16/99		8	50.00	R Proc Engr 2	400.00
04/19/99		8	65.00	R Prin Engr	520.00
04/19/99	Robena 4 Wheel Drive Vehicle	225	0.45	R Vehicle Use	101.25
04/19/99	Travel Expense	1	59.55	Miscellaneous	59.55
04/19/99		8	60.00	R Sr Proc Eng	480.00
04/19/99		8	60.00	R Sr Proc 2	480.00
04/19/99		8	50.00	R Proc Engr	400.00
04/19/99		8	50.00	R Proc Engr 2	400.00
04/20/99		8	65.00	R Prin Engr	520.00
04/20/'00	Robena 4 Wheel Drive Vehicle	225	0.45	R Vehicle Use	101.25
04/20/99		8	60.00	R Sr Proc Eng	480.00
04/20/99		8	60.00	R Sr Proc 2	480.00
04/20/99		8	50.00	R Proc Engr	400.00
04/20/99		8	50.00	R Proc Engr 2	400.00
04/21/99		8	65.00	R Prin Engr	520.00
04/21/99	Robena 4 Wheel Drive Vehicle	140	0.45	R Vehicle Use	63.00
				Total	

Golden Eagle Technical Services, LLC
 HC 59 Box 48J
 Craigsville, WV 26205
 (304) 742-6000

Invoice

DATE	INVOICE NO.
04/30/99	990460

BILL TO
Robena, L.L.C. 1145 East South Union Avenue, Suite 1 Midvale, UT 84047

P.O. NO.	TERMS	PROJECT
Verbal	Net 30	

SERVIC...	DESCRIPTION	QTY	RATE	PROJECT/JOB	AMOU...
04/21/99	Travel Expense	1	13.60	Miscellaneous	13.60
04/21/99		8	60.00	R Sr Proc Eng	480.00
04/21/99		8	60.00	R Sr Proc 2	480.00
04/21/99		8	50.00	R Proc Engr	400.00
04/21/99		8	50.00	R Proc Engr 2	400.00
04/22/99		8	60.00	R Sr Proc 2	480.00
04/22/99		8	50.00	R Proc Engr	400.00
04/22/99		8	50.00	R Proc Engr 2	400.00
04/23/99		8	60.00	R Sr Proc 2	480.00
04/23/99		8	50.00	R Proc Engr	400.00
04/23/99		8	50.00	R Proc Engr 2	400.00
04/26/99		8	65.00	R Prin Engr	520.00
04/26/99	Robena 4 Wheel Drive Vehicle	400	0.45	R Vehicle Use	180.00
04/26/99	Travel Expenses	1	8.58	Miscellaneous	8.58
04/26/99		8	60.00	R Sr Proc 2	480.00
04/26/99		8	50.00	R Proc Engr	400.00
04/26/99		8	50.00	R Proc Engr 2	400.00
04/27/99		8	65.00	R Prin Engr	520.00
04/27/99	Business Meal	1	32.14	Miscellaneous	32.14
04/27/99		8	60.00	R Sr Proc 2	480.00
04/27/99		8	50.00	R Proc Engr	400.00
04/27/99		8	50.00	R Proc Engr 2	400.00
04/28/99		4	65.00	R Prin Engr	260.00
04/28/99	Robena 4 Wheel Drive Vehicle	400	0.45	R Vehicle Use	180.00
04/28/99	Business Meal	1	20.14	Miscellaneous	20.14
04/28/99	Travel Expense	1	6.50	Miscellaneous	6.50
04/28/99		8	60.00	R Sr Proc 2	480.00
04/28/99		8	50.00	R Proc Engr	400.00
04/28/99		8	50.00	R Proc Engr 2	400.00
04/29/99		8	60.00	R Sr Proc 2	480.00
04/29/99		8	50.00	R Proc Engr	400.00
04/29/99		8	50.00	R Proc Engr 2	400.00
04/30/99		8	60.00	R Sr Proc 2	480.00
04/30/99		8	50.00	R Proc Engr	400.00
04/30/99		8	50.00	R Proc Engr 2	400.00
	ICPE Professional Services December 1998	1	6320.00	Miscellaneous	6320.00
	ICPE Professional Services January 1999	1	8134.00	Miscellaneous	8134.00

Total

Golden Eagle Technical Services, LLC
 HC 59 Box 48J
 Craigsville, WV 26205
 (304) 742-6000

Invoice

DATE	INVOICE NO.
04/30/99	990460

BILL TO
Robena, L.L.C. 1145 East South Union Avenue, Suite 1 Midvale, UT 84047

P.O. NO.	TERMS	PROJECT
Verbal	Net 30	

SERVIC...	DESCRIPTION	QTY	RATE	PROJECT/JOB	AMOU...
	ICPE Professional Services February 1999	1	30025.83	Miscellaneous	30025.83
	ICPE Professional Services March 1999	1	63070.82	Miscellaneous	63070.82
	ICPE Professional Services April 1999	1	61426.59	Miscellaneous	61426.59
				Total	\$209,981.50

Tab O

Robena, L.L.C.

1145 East South Union Avenue
Suite 100
Midvale, UT. 84047
Telephone: (801) 255-5545
Fax: (801) 255-5661

August 26, 1999

Mr. Gordon Deane
Palmer Management Corporation
13 Elm Street, Suite 200
Cohasset, MA 02025

Re: Payment of Outstanding Invoices for Robena, L.L.C.

Dear Gordon:

As we have discussed with you and with Rob Dulebohn several times in the past, the following contractors have outstanding invoices which remain unpaid:

Viron Energy
ICPE
Golden Eagle Technical Services
Hill, Johnson, & Schmutz

Robena, L.L.C. and Robena, L.P. engaged these entities to provide operation, management and/or design services for continued operation and construction of or relating to the Robena project. Each of these entities has provided the services contracted for and has continued in good faith to provide the services requested in order to not interrupt operation or ongoing construction. Each entity was given repeated assurances that they would be paid for services provided no later than August 11, 1999. This was based upon the assurances of Rob Dulebohn, most recently in a telephone call on approximately July 12, 1999, that these invoices would be paid. To date, no payment has been made and we have received letters from three of the entities requesting that outstanding invoices be paid as assured.

I understand that the money to pay these outstanding invoices is included in the current approved budget associated with the Management Agreement recently executed and effective July 1, 1999. Except as otherwise provided in the Management Agreement, the role, scope of services to be provided and compensation associated with each of these entities on a go-forward basis is to be evaluated and determined by Palmer Management as Managing Agent. Nevertheless, the past services provided remain the responsibility of Robena, L.L.C. and need to be paid.

The purpose of this letter is to confirm our prior instructions that Palmer Management pay, with money available from current budgeted funds, the outstanding invoices of these entities as has been promised, and that Palmer Management proceed to establish the future roles of each of these entities as soon as practicable.

Mr. Gordon Deane
August 26, 1999
Page 2

If you would like to discuss this in greater detail, please give me a call. Attached are copies of letters from Viron, Hill, Johnson and Schmutz and ICPE, some of which you may have already received a copy directly.

Sincerely,

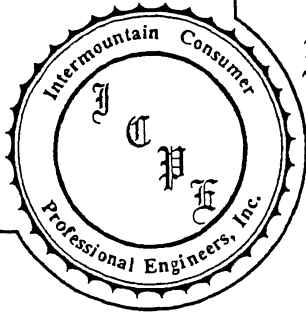
A handwritten signature in black ink, appearing to read "Steven Nash", with a large, stylized initial "S" and "N".

Steven Nash

SN/jlm

Enclosure

cc: Robert Dulebohn - Providian
Mark Rodak - Viron
Anton Tonic - ICPE
Kelly Nash - HJS
Dan Permenter - GETS



Intermountain Consumer Professional Engineers, Inc.

Consulting Engineers
1145 East South Union Avenue
Midvale, Utah 84047

August 24, 1999

Mr. Steve Nash
Robena, L.L.C.
1145 East South Union Avenue, Suite 100
Midvale, UT 84047

Re: Invoices Outstanding for Robena Related Projects

Dear Mr. Nash:

I have received repeated assurances from you during past last three weeks that the outstanding invoices relating to the Robena projects would be paid. As of the date of this letter, no payments have been received.

As we have previously discussed, ICPE cannot accept such long delays in payment of project invoices. Unfortunately, I now find it necessary to implement the late payment provision of our agreements.

Beginning with the August 1999 billing period invoices, ICPE will charge a 1.5% per month late payment penalty charge on all unpaid balances over 30 days past due. Once assessed, these late payment penalty charges will be due and collectible and become part of the outstanding balance due to ICPE.

The Robena management and operation and maintenance projects have 5 months of outstanding invoices. The Robena Wash Plant project has 9 months of outstanding invoices. While ICPE, as a courtesy, has been willing to work with you given the start-up issues associated with this project, the payment delays to date are simply unacceptable.

A detailing of the outstanding invoices are presented below:

1. Robena Plant Operation and Maintenance; ICPE No. 05-164

BILLING PERIOD	AMOUNT
April 1999	17,438.67
May 1999	17,336.50
June 1999	21,185.00
July 1999	<u>16,923.00</u>
TOTAL	72,883.17

2. Robena Project General Management; ICPE No. 06-164

BILLING PERIOD	AMOUNT
April 1999	13,005.00
May 1999	12,526.00
June 1999	11,082.00
July 1999	<u>12,377.00</u>
TOTAL	48,990.00

Mr Steve Nash
August 24, 1999
Page 2

3 Robena Wash Plant Engineering, ICPE No 01-283 invoiced to Golden Eagle Technical Services

BILLING PERIOD	AMOUNT
December 1998	6,320 00
January 1999	8,134 00
February 1999	30,025 83
March 1999	63,070 82
April 1999	61,426 59
May 1999	47,865 03
June 1999	8,248 00
July 1999	<u>6,932 00</u>
TOTAL	232,022 27

Payment of all outstanding invoices as shown above, prior to September 15, 1999 will eliminate the need for ICPE to impose the late payment penalty charges Failure of Robena to initiate payment of these invoices plus the interest penalty charges will cause ICPE to reconsider its involvement in the related Robena projects

Sincerely,



Anton Tonic
V P Manager of Operations

AT/cm

HILL, JOHNSON & SCHMUTZ
A LIMITED LIABILITY COMPANY

RICHARD T. HILL
F. McKay JOHNSON
EVAN A. SCHMUTZ
Wm. KELLY NASH
STEPHEN QUESENBERY†
ANGUS C. FOX††

Registered Patent Attorney
M. REED ADAMS
LANCE N. LONG†
CURTIS R. HUSSEY
CURTIS B. HOFFMAN†
BILL O. HEDER
WILLIAM L. WATTS, III*
Of Counsel
HECTOR CHICHONI
Of Counsel

ATTORNEYS AND COUNSELORS
JAMESTOWN SQUARE
3319 NORTH UNIVERSITY AVENUE
SUITE 200
PROVO, UT 84604

TELEPHONE (801) 375-6600
FACSIMILE (801) 375-3865
E-MAIL ADDRESS: knash@hjslaw.com

CORRESPONDENT FIRM
JONES, WALDO, HOLBROOK
& McDONOUGH, P.C.
OFFICES IN:
SALT LAKE CITY, UTAH;
WASHINGTON, D.C.;
AND ST. GEORGE, UTAH

† ALSO ADMITTED IN ILLINOIS
*ALSO ADMITTED IN CALIFORNIA
†ALSO ADMITTED IN WASHINGTON
*ONLY ADMITTED IN CALIFORNIA

FACSIMILE TRANSMITTAL COVER SHEET

PLEASE DELIVER TO:

NAME: Mr. Steve Nash

FAX NO.: (801) 566-0088

FROM: Wm. Kelly Nash

FAX NO: (801) 375-3865

DATE: August 25, 1999

TOTAL PAGES: 3 (Including cover sheet)

IF YOU DO NOT RECEIVE ALL OF THE PAGES,
PLEASE CALL THE NUMBER LISTED BELOW ASAP
(801) 375-6600

TRANSMITTAL MEMORANDUM:

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HILL, JOHNSON & SCHMUTZ
A PROFESSIONAL CORPORATION

RICHARD L. HILL
F. MCKAY JOHNSON
EVAN A. SCHMUTZ
Wm. KELLY NASH
STEPHEN QUESENBERY
ANGUS C. POX††

Registered Patent Attorney
M. REED ADAMS
LANCE N. LONG†
CURTIS R. HUSSEY
CURTIS B. HOFFMAN†
BILL O. HYDER
WILLIAM L. WATTE, III*
Of Counsel

ATTORNEYS AND COUNSELORS
1145 EAST SOUTH UNION AVENUE
SUITE 105
MIDVALE, UTAH 84047
PROVO, UT 84604

TELEPHONE (801) 255-5449
FACSIMILE (801) 255-5661

ADDITIONAL OFFICES IN:
JAMESTOWN SQUARE
3319 NORTH UNIVERSITY AVENUE
PROVO, UT 84604

CORRESPONDENT FIRM:
JONES, WALDO, HOLBROOK
& McDONOUGH, P.C.

† ALSO ADMITTED IN IDAHO
† ALSO ADMITTED IN CALIFORNIA
† ALSO ADMITTED IN WASHINGTON
* ONLY ADMITTED IN CALIFORNIA

August 24, 1999

Via Hand-Delivery

Mr. Steve Nash
CoBon Synfuels #2, LLC
Robena, LLC
1145 East South Union Avenue
Suite 100
Midvale, UT 84047

Re: Outstanding Invoices For Legal Services

Dear Mr. Nash:

This letter is a follow up to your various communications with our office over the past few months concerning the status of Robena, LLC's payment for outstanding invoices for legal services provided by the firm since the summer of 1998. As you know, these invoices have been and remain seriously past due. As discussed, the firm has recognized the startup nature of Robena, LLC's operations and has been very patient with this account. However, as you have been informed repeatedly, the firm simply can no longer continue to extend credit to Robena, LLC unless this matter is immediately resolved and your account brought current.

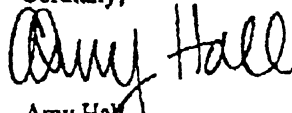
By way of background, you have repeatedly advised this office that payment in full would be forthcoming. You most recently indicated that a full payment would absolutely be made by the middle of August. Needless to say, the stated time has again come and gone and no payment has been received. In reviewing the firm's retainer agreement in this matter, I would remind you that, to date, the firm has not assessed any interest on the unpaid account despite its contractual right to such interest. I would also note that the rates actually charged for legal services were initially discounted and below that agreed upon for several months in 1998 as a courtesy. These efforts to assist Robena, LLC were based upon the understanding that invoices would be timely paid.

Mr. Steve Nash
August 24, 1999
Page 2

Regrettably, I must inform you that if this matter is not satisfactorily resolved within the next ten (10) days, the firm will necessarily assess interest on outstanding invoices, will consider adjusting the billed rates to conform with the undiscounted and agreed upon rates referenced in the retainer agreement and will suspend further legal services on this overdue account.

I am very hopeful that this matter can be quickly resolved. Please call if you have any questions

Cordially,


Amy Hall
Office Administrator

cc: Wm. Kelly Nash, Esq.

VIRON ENERGY
3920 Market Street
Camp Hill, Pennsylvania 17011

FACSIMILE TRANSMISSION SHEET

DATE: 8/25/99 TIME: 8:50 am
TO: ROSENA LLC AT FAX: 801-566-0088
ATTN: STEVE DASH PAGES: 2 (including cover)
FROM: MARK ROOSK FAX #: (717)730-9416

The original of this transmitted document will be sent by:

☐ Regular Mail

☐ Overnight Mail

☐ This is the ONLY form of delivery of this document

MESSAGE: cc: Palmer Management
Rick Visovsky

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify this office at (717)730-9412, and return the original message to the above address via the U.S. Postal Service. Thank you.

VIRON ENERGY
3920 Market Street
Camp Hill, Pennsylvania 17011
717-730-9412
Fax 717-730-9416

August 25, 1999

Mr. Steve Nash
Robena, L.L.C.
1145 East South Union Avenue
Midvale, Utah 84047

Re: Past Due Invoices

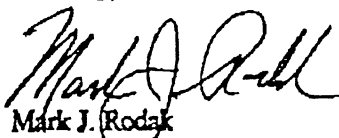
Via: Fax to 801-566-0088

Dear Mr. Nash:

Notice is hereby given that Robena, L.L.C.'s account is seriously past due. Unless the total outstanding balance is paid by August 31, 1999, Viron Energy will suspend services to the Robena Project, effective September 1, 1999.

Should this cessation action become necessary, the resultant impacts to the project have been previously and clearly conveyed to Robena, L.L.C..

Sincerely,


Mark J. Rodak
Partner

MJR:bas

cc: Rick Visovsky

Tab P

VIRON ENERGY
3920 Market Street
Camp Hill, Pennsylvania 17011

FACSIMILE TRANSMISSION SHEET

DATE: 9/01/99 TIME: 12:01 am
TO: ROBENA, LLC AT FAX: 801-566-0088
ATTN: STEVE NASH PAGES: 2 (Including cover)
FROM: MARK ROOAK FAX #: (717)730-9416

The original of this transmitted document will be sent by:

☐ Regular Mail

☐ Overnight Mail

☒ This is the ONLY form of delivery of this document

MESSAGE: cc: RICK SHAW
JAMES FILLIAGE
CONSOL PLAZA, DIST 23 EVP
GORDON DEANE

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify this office at (717)730-9412, and return the original message to the above address via the U.S. Postal Service. Thank you.

VIRON ENERGY
3920 Market Street
Camp Hill, Pennsylvania 17011
717-730-9412
Fax 717-730-9416

September 1, 1999

Mr. Steve Nash
Robena, L.L.C.
1145 East South Union Avenue
Midvale, Utah 84047

Re: Robena Project
Services Termination Notice

Via: Fax 801-566-0088

Dear Mr. Nash:

Pursuant to our letter of August 25, 1999, notice is hereby given that Viron Energy is terminating services to the Robena Project effective immediately.

Sincerely,



Mark J. Rodak

MJR:bas

cc: Rick Shaw, Consol
James Filliagi, Pond Reclamation
Consol Plaza, Distribution 23EVP
Gordon Deane, Palmer Management

Tab Q

Robena, L.L.C.

1145 East South Union Avenue, Suite 100

Midvale, Utah 84047

Telephone: (801) 255-5545

Fax: (801) 255-5661

Facsimile Transmission

Date: 9/1/99

No. of Pages (including cover sheet): 3

To: Gordon Deane
cc: Rob Dulebski

From: Steve Nash

Fax No. (781) 383-3205
Phone No. (415) 278-6010
()

FAXED
9/1/99

Message:

The information contained in this facsimile transmission is confidential and intended to be sent only for the use of the individual(s) or entity named on this transmission sheet. If you are not the intended recipient of this facsimile, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying or distribution of this facsimile is strictly prohibited. If you have received this facsimile in error, please notify us by telephone (801) 255-5545 immediately. Thank you.

CoBon Synfuel #2, L.L.C.

1145 East South Union Avenue
Suite 100
Midvale, UT. 84047
Telephone: (801) 255-5545
Fax: (801) 255-5666

SENT VIA FAX

September 1, 1999

Mr. Gordon Deane
Palmer Management Corporation
13 Elm Street, Suite 200
Cohasset, MA 02025

Re: Viron Notice of Termination - Dated September 1, 1999

Dear Gordon:

CoBon Synfuel #2, L.L.C. ("Synfuel") just received a fax from Viron Energy, L.L.C. ("Viron") giving notice that it has terminated its provision of services to the Robena Project. This development is extremely disappointing and is a crisis in Synfuel's opinion which must be resolved immediately. Synfuel believes Viron's disassociation from the day to day management will have a devastating impact on the Project's success, and could even lead to Consol's termination of the core agreements underlying the plant's operations. This relationship has been carefully managed in the past, and particular attention has been given to maintain the positive working relationship with Consol.

On numerous occasions in the past several months, Synfuel has expressly advised Palmer Management Corporation ("Palmer") and Rob Dulebohn of the critical role Viron plays with Consol and Pond Reclamation with respect to the Robena Project. Synfuel has expressed its concerns many times and most recently when it finalized the management agreement.

As recently as August 26, 1999, Synfuel directed Palmer to cause several outstanding invoices to be paid by Robena, L.L.C., including invoices from Viron. While Synfuel is not critical of Palmer's desire to renegotiate with any of these entities on a go-forward basis, Palmer's payment delays and attempts to renegotiate for past services that have clearly been performed and approved by the General Partner, and which are now seriously past due, have placed the success of the Robena Project in jeopardy. This is in disregard of Synfuel's repeated warnings over the past 60 days and its express instructions as the General Partner. The termination of Viron is totally unacceptable. Palmer's delays in causing payments to be made for past

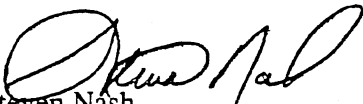
Mr. Gordon Deane
September 1, 1999
Page 2

services, despite the payment directives of the General Partner, appear to have now backfired. The apparent breakdown in managing Viron, a sensitive relationship underlying the Project, is a serious concern to Synfuel.

Synfuel would reiterate its directive that Palmer make immediate payment for all past and outstanding invoices and take steps to immediately place Viron under contract on a go-forward basis to ensure the stability and future success of the Project.

Please call me immediately to discuss this situation and Palmer's actions leading up to the notice of termination in detail.

Sincerely,



Steven Nash

SN/jlm

cc: Rob Dulebohn

Tab R

VIRON ENERGY
3920 Market Street
Camp Hill, Pennsylvania 17011
717-730-9412
Fax 717-730-9416

November 10, 1999

Mr. Steve Nash
Robena, L.L.C.
1145 East South Union Avenue
Midvale, Utah 84047

CERTIFIED MAIL NO. Z 476 964 244

Re: Demand Notice

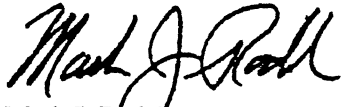
Dear Mr. Nash:

As you are aware, Viron Energy ("Viron") was instrumental in development of the Robena Project in Greensboro, Pennsylvania and further had been providing consulting services to the project through September 1, 1999, at which time Viron issued a termination notice for nonpayment of outstanding invoices.

From September 1, 1999 until last week, Viron has been attempting to resolve the issue of outstanding invoices with the project's agent, Palmer Management ("Palmer"). Unfortunately, despite our mutual attempts, the matter has no foreseeable solution.

Therefore, this letter hereby constitutes formal legal demand for payment of our outstanding invoices totaling \$60,000.00 within 10 (ten) days upon receipt of this notice.

Sincerely,



Mark J. Rodak
Partner

MJR:bas
cc: Rick Visovsky

Tab S

EXHIBIT 162
FOR IDENTIFICATION
DATE _____
AMANDA RICHARDS, CSR

VIRON ENERGY, : IN THE COURT OF COMMON PLEAS
Plaintiff, : CUMBERLAND COUNTY, PENNSYLVANIA
vs :
: CIVIL ACTION - LAW
ROBENA, L.L.C., :
Defendant. : NO. ~~CIVIL~~ 1999 - 7141 *Civil*

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served by entering with the Court your defenses to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you as a Judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any claim of relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOU LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator - Third Floor
Cumberland County Courthouse
Carlisle, Pennsylvania 17013
717-240-6200

VIRON ENERGY,	:	IN THE COURT OF COMMON PLEAS
	:	CUMBERLAND COUNTY, PENNSYLVANIA
Plaintiff,	:	
	:	
vs.	:	CIVIL ACTION - LAW
	:	
ROBENA, L.L.C.,	:	
	:	NO. _____ CIVIL 1999
Defendant.	:	

COMPLAINT

AND NOW COMES, Plaintiff, Viron Energy, by and through its Principal Partner, Mark J. Rodak, and files this complaint and specifically avers the following in support thereof:

1. Plaintiff, Viron Energy, is a partnership organized and existing by virtue of the laws of the Commonwealth of Pennsylvania with a principle place of business located at 3920 Market Street, Camp Hill, Cumberland County, Pennsylvania.
2. Robena, L.L.C. is a limited liability company organized and existing by virtue of the laws of Delaware with a principle place of business located at 1145 East South Union Avenue, Midvale, Utah.
3. The Defendant entered into a Letter of Understanding ("LOU") with Plaintiff on May 8, 1998 through it's agent CoBon Energy, L.L.C. ("CoBon"), whereby Plaintiff would be paid a consulting fee in the amount of \$3,750.00 per week for its assistance in identifying, evaluating and obtaining suitable coal fines to be purchased by CoBon, or its assigns. A true and correct copy of the May 8, 1998 letter is set forth on Exhibit "A", attached hereto and made part hereof by reference.

4. From May 1, 1998 through August 31, 1999, the Plaintiff rendered consulting services to the Defendant as itemized on the Plaintiff's business records. A true and correct copy of the records relating to the Defendant is set forth on Exhibit "B", attached hereto and made part hereof by reference.

5. The Defendant has made payments in the amount of \$180,000.00 on the account balance for the services as set forth in Exhibit "A". True and correct copies of Defendant's payments are set forth on Exhibit "C", attached hereto and made part hereof by reference.

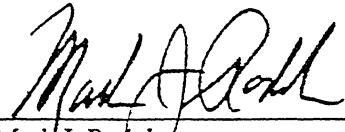
6. The charges made by the Plaintiff to Defendant are reasonable charges for services of the nature rendered.

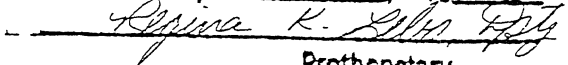
7. Although demand has been made by Plaintiff on November 10, 1999 by regular mail, postage prepaid, certified return receipt requested, Defendant has failed and/or refuses to pay the outstanding invoices for; May 1, 1999, June 1, 1999, July 1, 1999 and August 1, 1999 which total \$60,000.00 True and correct copies of the invoices are set forth on Exhibit "D", attached hereto and made part hereof by reference

8. Defendant's failure and/or refusal to pay said balance for services, results in an unjust enrichment to said Defendant and injury to Plaintiff

WHEREFORE, the Plaintiff demand Judgment against the Defendant in the total sum of
SIXTY THOUSAND DOLLARS and 00/100, with interest from September 1, 1999, together with
the costs and disbursements of this action.

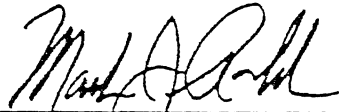
DATED: November 24, 1999


Mark J. Rodak
Representative for Plaintiff
3920 Market Street
Camp Hill, Pennsylvania 17011
717-730-9412

TRUE COPY FROM RECORD
In Testimony whereof, I here unto set my hand
and the seal of said Court at Garfield, Pa.
This 24 day of Nov, 19 99

Prothonotary

VERIFICATION

Subject to the penalties of 18 Pa C S. Section 4904 (relating to unsworn falsification to authorities), I, Mark J. Rodak, hereby declare that, as Partner of Viron Energy, Plaintiff in the matter herein, I am authorized to make this Verification on behalf of said Plaintiff and that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief.

A handwritten signature in black ink, appearing to read 'Mark J. Rodak', written over a horizontal line.

Mark J. Rodak
3920 Market Street
Camp Hill, Pennsylvania 17011
717-730-9412

CERTIFICATE OF SERVICE

AND NOW, this 24th day of November, 1999, I, Mark J. Rodak, hereby certify that I have served a copy of the Complaint on this date, by depositing a copy of the same in the United States mail, postage prepaid, in Camp Hill, Pennsylvania addressed as follow:

Mr Steve Nash
Robena, L L C
1145 East South Union Avenue
Midvale, Utah 84047

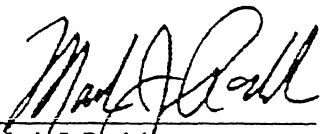

Mark J. Rodak
3920 Market Street
Camp Hill, Pennsylvania 17011
717-730-9412

EXHIBIT "A"

CoBon Energy, L.L.C.

1149 East Santa Union Avenue
Midvale, Utah 84047
Telephone: (801) 251-6666
(801) 566-1088

May 8, 1993


On April 16, 1993 and our recent
(CoBon") currently has for coal fines
located and operating. As
(CoBon") understands that
possible for assisting CoBon
as may be required in
I have advised me that
separate entity the
continued to deal with the identification, evaluation and obtaining of

know, this Project is in the twelfth hour and literally millions have been invested
As previously indicated, CoBon is frustrated that identifying and obtaining
raw material supply has even become a problem. Nevertheless, CoBon is
concerned that if suitable coal fines are not located immediately, the Project
may fail altogether. As a result of this economic hardship, and without
waiving its rights under CoBon's November 1, 1995 Consulting Agreement with AGTC
and Alpine, CoBon has decided to move forward in working with you to solve this urgent
problem. Inasmuch as CoBon has previously made advanced distributions to AGTC and Alpine
incident to this Project, and while reserving the right to treat any fees paid to the Project by
hereafter relating to obtaining suitable raw materials as additional advanced distributions, and
otherwise deem appropriate, CoBon agrees to work with you as follows:

CoBan understands that Robena, L.L.C. ("Robena") will hereafter enter into a consulting agreement with Viton Energy for Viton's reasonable and necessary assistance and consultation in identifying, evaluating and obtaining suitable raw material resources. The fees will be suitable in all respects and acceptable for the Project. CoBan understands that Viton will be paid a consulting fee for its assistance in identifying, evaluating and obtaining suitable coal fines to be purchased by CoBan for its basins. Robena will pay Viton a consulting fee in the amount of \$17,500 per week. Viton will be responsible for all out-of-pocket and other expenses and overhead incurred by Viton incident to Viton's performance of the foregoing services. The consulting agreement will be terminable by Robena at any time without cause and without notice.

If the foregoing terms are acceptable, please acknowledge your consent therein in the space provided below. Upon receipt of a copy of the signed acknowledgment, I will take steps reasonably necessary to obtain Robena's consent to the proposed terms of the consulting agreement and coordinate with Robena for the transmission of an advance consulting fee payment in the initial week of the term. I anticipate that the funds will be wired within 24 hours of my receipt of a signed consulting agreement.

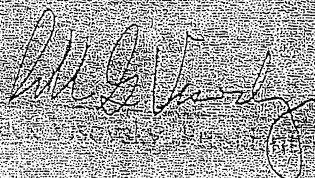
Sincerely,


Steven R. Nash
President

Acknowledgment and Consent

FOR: Viton

Viton Energy


Mark J. Nash, President


By: Mark J. Nash, President

Dated this 11th day of May, 1998


Mark J. Nash, President

Dated this 11th day of May, 1998

C. Robert J. Nash

EXHIBIT "B"

VIRON ENERGY
3920 Market Street
Camp Hill, Pennsylvania 17011
717-730-9412
Fax 717-730-9416

ACCOUNT SUMMARY

August 1, 1999

In Account with Robena, L.L.C.

Invoice (5/01/98)	\$ 15,000.00
Payment (5/20/98) Check No. 1050	(\$ 15,000.00)
Invoice (6/01/98)	\$ 15,000.00
Payment (6/01/98) Check No. 1066	(\$15,000.00)
Invoice (7/01/98)	\$ 15,000.00
Payment (7/01/98) Check No. 1111	(\$15,000.00)
Invoice (8/01/98)	\$ 15,000.00
Payment (8/14/98) Check No. 1140	(\$15,000.00)
Invoice (9/01/98)	\$ 15,000.00
Payment (9/15/98) Wire Transfer	(\$15,000.00)
Invoice (10/01/98)	\$ 15,000.00
Payment (10/02/98) Check No. 1201	(\$15,000.00)
Invoice (11/01/98)	\$ 15,000.00
Payment (11/01/98) Check No. 1229	(\$15,000.00)

Invoice (12/01/98)	\$ 15,000.00
Payment (12/10/98) Wire Transfer	(\$15,000.00)
Invoice (1/01/99)	\$ 15,000.00
Payment (1/02/99) Check No. 1266	(\$15,000.00)
Invoice (2/01/99)	\$ 15,000.00
Payment (2/02/99) Check No. 1283	(\$15,000.00)
Invoice (3/01/99)	\$ 15,000.00
Payment (3/01/99) Check No. 1304	(\$15,000.00)
Invoice (4/01/99)	\$ 15,000.00
Payment (4/01/99) Check No. 1325	(\$15,000.00)
Invoice (5/01/99)	\$ 15,000.00
Invoice (6/01/99)	\$ 15,000.00
Invoice (7/01/99)	\$ 15,000.00
Invoice (8/01/99)	\$ 15,000.00
Balance Owing	\$ 60,000.00

EXHIBIT "C"

1050

May 20 1998

311 1/1240
2118

\$ 15,000.00

The Sum of 15,000 Dollars and 00 Cents**8 DOLLARS

**First
Security
Bank**

First Security Bank NA
1 801 246 6600

Steve Paul
1 8911

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DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY NO RECEIPT DESIRED

DATE	DESCRIPTION	AMOUNT	DISTRIBUTIONS	
			ACCT NO	AMOUNT
5/20/98	Consulting Fee			\$15,000.00

THE UNIVERSITY OF CHICAGO PRESS

100

PAY TO THE ORDER OF VERA LUCY

for the film of "The Volary and the Caves" (1966).

$\{ \frac{1}{\sqrt{2}}(e^{it} + e^{-it}), \frac{1}{\sqrt{2}}(e^{it} - e^{-it}) \}$

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6414
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SECRETARY OF THE ARMY
WASHINGTON, D. C. 20315

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June 26 1998

PAY TO THE
ORDER OF Virion Energy

\$15,000.00

The sum of 15,000 Dollars and 00 Cents ***** DOLLARS

First Security Bank, P.A.
1-801-246-6000

First Security Bank



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ROBENA L.L.C. 2008
SANDVALE, UT 84047

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF DEBTS DESCRIBED BELOW
IF NOT CORRECT PLEASE RETURN TO ISSUING AGENCY IMMEDIATELY

DATE	DESCRIPTION	AMOUNT	DISTRIBUTIONS	
			ACCT NO	AMOUNT
6/26/98	Consulting Fee	\$ 15,000.00		

EMPLOYEE	TOTAL GAINBBS	FICA	WITHHELD TAX	STATE TAX	RECEIPTS	ISSUED	RECEIVED
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August 14 1998

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\$**15,000.00

** The Sum of 15,000 Dollars and 00 Cents***** DOLLARS

First Security Bank, N.A.
1-801-246-6800

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DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT, PLEASE NOTIFY US PROMPTLY NO RECEIPT DESIRED

[illegible]

Financial Trust Company
1415 Ritner Highway
Carlisle, PA 17013

Financial Trust Company

Incoming Wire Transfer Notice

Alpine Coal Company Inc.
3920 Market St
Camp Hill, Pa 17011-4202

September 15, 1998

Alpine Coal Company Inc.:

A wire transfer was received for credit to your account number 3440024101 in the amount of \$ 15,000.00. This transaction will be credited to your account for the amount of the wire. This notification is in the place of a deposit receipt.

Central Administration
Financial Trust Company
(717)241-7739

ROBENA L.L.C. 3-98
1145 E. SOUTH UNION AVE. SUITE 100
MIDVALE, UT 84047

1201

30-1/1240
218

DATE October 1, 1998

PAY TO THE
ORDER OF Viron Energy

\$ 15,000.00

** The Sum of 15,000 Dollars and 00 Cents ***** DOLLARS

First Security Bank
First Security Bank, N.A.
1-801-246-0000

[Signature]

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ROBENA L.L.C. 3-98
MIDVALE, UT 84047

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT, PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED

DATE	DESCRIPTION	AMOUNT	DISTRIBUTIONS	
			ACCT. NO.	AMOUNT
10/1/98	Consulting Fee	\$15,000.00		

EMPLOYEE	PERSON EARNING	TOTAL EARNINGS	FICA	DEDUCTIONS			TOTAL DEDUCTIONS	NET PAY
				WITHHOLDINGS U.S. INC. TAX	STATE TAX	FEDERATE		

MIDVALE, UT 84047

DATE November 1, 1998

31-1/1240
218

PAY TO THE
ORDER OF Viron Energy

\$ 15,000.00

The Sum of 15,000 Dollars and 00 Cents*** DOLLARS

**First
Security
Bank**

First Security Bank, N.A.
1-801-246-6600

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IOBENA L.L.C. 3-98
MIDVALE, UT 84047

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT, PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED

DATE	DESCRIPTION	AMOUNT	DISTRIBUTIONS	
			ACCT. NO.	AMOUNT
1/98	Payment for consulting fee	\$ 15,000.00		

PERIOD ENDING	TOTAL EARNINGS	DEDUCTIONS				TOTAL DEDUCTIONS	NET PAY
		FICA	WITHHOLDING U.S. INC. TAX	STATE TAX	MEDICARE		

Financial Trust Company
1415 Ritner Highway
Carlisle, PA 17013

Financial Trust Company

Incoming Wire Transfer Notice

Alpine Coal Company Inc
3920 Market St.
Camp Hill, Pa 17011-4202

December 11, 1998

Alpine Coal Company Inc :

A wire transfer was received for credit to your account number 3440024101 in the amount of \$15,000.00. This transaction will be credited to your account for the amount of the wire. This notification is in the place of a deposit receipt

Bank Administration
Financial Trust Company
(717) 241-7739

ROBENA L.L.C. 398
1145 E SOUTH UNION AVE SUITE 100
MIDVALE UT 84047

1266

DATE December 21, 1991

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PAY TO THE ORDER OF Valon Energy

\$ 15,000.00

The sum of 15,000 Dollars and 00 Cents ***** DOLLARS

First
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Bank

First Security Bank N.A.
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DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY NO RECEIPT DESIRED

DATE	DESCRIPTION	AMOUNT	DISTRIBUTIONS	
			ACCT NO	AMOUNT
1/	consulting services	\$15,000.00		

DD NC	DEDUCTIONS					TOTAL DEDUCTIONS	NET PAY
	TOTAL EARNINGS	FICA	WITHHOLDING U.S. INC. TAX	STATE TAX	MEDICARE		

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 The Sum of 15,000 Dollars and 00 Cents*** DOLLARS

First Security Bank NA
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DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY NO RECEIPT DESIRED

DATE	DESCRIPTION	AMOUNT	DISTRIBUTIONS	
			ACCT NO	AMOUNT
09	Consulting Services, Coal Fines-CAP	\$ 15,000.00		

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DATE MARCH 1, 1999

VIRON ENERGY

\$15,000.00**

THE SUM OF 15,000 DOLLARS AND 00/CENTS***
 DOLLARS

**First
Security
Bank**

First Security Bank, N.A.
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ENA L.L.C. 3-98
ALE. UT 84047

DETACH AND RETAIN THIS STATEMENT

THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT, PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED

DATE	DESCRIPTION	AMOUNT	DISTRIBUTIONS	
			ACCT. NO.	AMOUNT
25/99	MARCH 1999 CONSULTING SERVICES COAL FINES CAP	15,000.00		

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ROBENA L.L.C. 3-98
1145 E. SOUTH UNION AVE. SUITE 100
MIDVALE, UT 84047

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DATE March 26, 1999

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PAY TO THE
ORDER OF Viron Energy

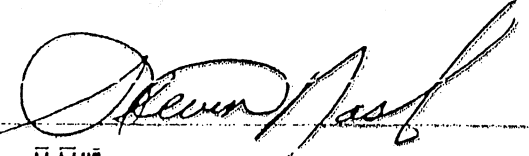
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** The Sum of 15,000 Dollars and 00 Cents*****

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**First
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First Security Bank, N.A.
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ROBENA L.L.C. 3-98
MIDVALE, UT 84047

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT, PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED

DATE	DESCRIPTION	AMOUNT	DISTRIBUTIONS	
			ACCT. NO.	AMOUNT
3/26/99	Consulting Services	\$ 15,000.00		

EMPLOYEE		DEDUCTIONS								TOTAL DEDUCTIONS	NET PAY
PERIOD ENDING	TOTAL EARNINGS	F.I.C.A.	WITHHOLDING U.S. INC. TAX	STATE TAX	MEDICARE						

EXHIBIT "D"

VIRON ENERGY
3920 Market Street
Camp Hill, Pennsylvania 17011
717-730-9412
Fax 717-730-9416

INVOICE

May 1, 1999

In Account with Robena, L.L.C.

Professional Services:

Re: Robena Project
Greene County, Pennsylvania

For: Fines Acquisition

Purchase Order: Letter of Understanding (LOU) May 18, 1998

Amount Due: \$15,000.00

Terms: Due Upon Receipt

Please make check payable to:

Viron Energy
c/o M. R. International
3920 Market Street
Camp Hill, Pennsylvania 17011

VIRON ENERGY
3920 Market Street
Camp Hill, Pennsylvania 17011
717-730-9412
Fax 717-730-9416

INVOICE

June 1, 1999

In Account with Robena, L L C

Professional Services:

Re: Robena Project
Greene County, Pennsylvania

For: Fines Acquisition

Purchase Order: Letter of Understanding (LOU) May 18, 1998

Amount Due \$15,000 00

Terms Due Upon Receipt
Please make check payable to

Viron Energy
c/o M R International
3920 Market Street
Camp Hill, Pennsylvania 17011

VIRON ENERGY
3920 Market Street
Camp Hill, Pennsylvania 17011
717-730-9412
Fax 717-730-9416

INVOICE

July 1, 1999

In Account with Robena, L.L.C.

Professional Services:

Re: Robena Project
Greene County, Pennsylvania

For: Fines Acquisition

Purchase Order: Letter of Understanding (LOU) May 18, 1998

Amount Due: \$15,000.00

Terms: Due Upon Receipt

Please make check payable to:

Viron Energy
c/o M. R. International
3920 Market Street
Camp Hill, Pennsylvania 17011

VIRON ENERGY
3920 Market Street
Camp Hill, Pennsylvania 17011
717-730-9412
Fax 717-730-9416

INVOICE

August 1, 1999

In Account with Robena, L.L.C.

Professional Services:

Re: Robena Project
Greene County, Pennsylvania

For: Fines Acquisition

Purchase Order: Letter of Understanding (LOU) May 18, 1998

Amount Due: \$15,000.00

Terms: Due Upon Receipt
Please make check payable to:

Viron Energy
c/o M. R. International
3920 Market Street
Camp Hill, Pennsylvania 17011

Tab T

FEB-16-2000 21:34

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PAGE 2

CoBon Synfuel #2, L.L.C.*1145 East South Union Avenue**Suite 100**Midvale, UT. 84047**Telephone: (801) 255-5545**Fax: (801) 255-5666*

February 16, 2000

Mr. Robert T. Dulebohn
Vice President
Providian Financial Corporation
201 Mission Street
San Francisco, CA 94105

SENT VIA Fax

Dear Rob:

It has come to our attention that more than one letter, indicating that CoBon Synfuel #2, LLC ("Synfuel" or "General Partner") was receiving a carbon copy, has been sent to Consol regarding the PLR required contract changes. Synfuel has not received copies of any of these letters and has not been involved in any of the subject discussions. It is only appropriate that if Synfuel is listed on a letter to Consol, or any other party, as receiving a copy, that it does in fact receive one. We would also appreciate an update on the status of discussions or correspondence with Consol on this matter. Synfuel has not been updated or communicated with on this issue since Kelly sent his comments to Palmer Management Corporation ("Palmer") in December 1999.

On another issue, it is our understanding that Intermountain Consumer Professional Engineers, Inc. ("ICPE") is no longer providing any services for Robena, LLC ("Robena") due to the fact that it has not received payments on any invoices for services since March 1999. Since that time, and for several months prior to that time, ICPE provided engineering design services in accordance with the scope included in the agreement with Golden Eagle Technical Services ("GETS"). It is our understanding that the services ranged, in general, from detailed design for both the deslime and wash plants to major equipment specification and selection in coordination with services provided by GETS. The engineering services also included operational and engineering support from Shawn Reddington and others for the pellet plant and management services by Steve Nash for the partnership. A copy of the GETS agreement with the scope of services of ICPE is enclosed.

In two separate additional agreements, Robena contracted with ICPE to provide engineering design for the electrical high voltage service to the wash plant and to provide construction

Mr. Robert T. Dulebohn
February 16, 2000
Page 2

management for the Farnham and Pfile ("F&P") design/build contract for the wash plant. Palmer was well aware of both of these agreements prior to and after assuming management responsibilities. Notably, Don Dargie worked on a daily basis with Shawn on the construction management contract and also with Ray Gunderson periodically on the electrical high voltage contract under the supervision of Palmer for several months. On December 15, 1999, ICPE discontinued services on both of these agreements due to lack of any payments, despite assurances that funds for these specific expenses were budgeted and invoices would be paid. Until that point in time, the work was completed as contracted for and was never disputed by Don, the General Partner or anyone at Palmer. In fact, on numerous occasions, Don acknowledged and thanked Shawn for the work he was performing. A copy of these agreements and the associated documents are also enclosed. Robena contracted for, and Palmer clearly utilized the ICPE engineering services, yet Palmer refuses to pay. The General Partner is at a loss for a rational explanation for this nonpayment. I understand that work summaries have been requested from ICPE and that the same have been, or will hereafter be, furnished to Palmer by ICPE.

Since the time that ICPE discontinued engineering services, Robena has continued to receive requests on almost a daily basis from F&P addressed to Robert Nash and copied to Don Dargie and Mark Rodak. For example, Robena received a letter today from F&P, addressed to Robert Nash (a copy is attached), wherein F&P references a meeting on 11-3-99 with Robert and the purported discussion and approval of a change order for additional concrete for the wash plant construction. Robert has absolutely no knowledge of any of this nor did he meet with or discuss it with F&P. To our knowledge and since the time of ICPE's discontinuation of services, a qualified engineer has not been responding to these requests. Synfuel has assumed that Don Dargie of Palmer has apparently been responding to these requests. However, this leads us to reiterate our concern that there is no one overseeing the construction of the wash plant. Due to the complexity of this project (i.e., the electrical, mechanical, and structural engineering components), Don is simply not technically qualified to be responding to many of these requests. Synfuel must insist that construction be halted until a qualified engineering firm is under contract to oversee construction and ensure compliance with design standards and that the partnership interests are protected. If Providian, which has essentially functioned as the general partner, does not want to use ICPE as a contracted engineering firm for the project, Synfuel is willing to accept Providian's directive. At this point, however, Synfuel is very concerned that there is not any qualified engineering firm under contract to review and respond to these issues as stated herein. It appears that a very large amount of money is at risk with no one responding to Synfuel's stated concerns regarding these issues on behalf of the Partnership. Please advise us of your plans to resolve this issue.

With these items brought to your attention, I would like to remind you that prior to contracting with Palmer, you reiterated assurances that the General Partner would be paid \$2-3,000 dollars per month on a go-forward basis to retain the necessary management services for performance of

Mr. Robert T. Dulebohn
February 16, 2000
Page 3

its general partner's responsibilities. Even prior to closing, it was the understanding of all parties that Synfuel would contract with ICPE for the services of Steven Nash as manager and for additional engineering support as budgeted. Nevertheless, no payments have been received for services rendered despite assurances therefore since that time. Synfuel, through its contract with ICPE, continued to provide management services on a full time basis until Palmer was under contract and on a part time basis thereafter. You also assured Synfuel that the Viron and ICPE contracts would be restructured by Palmer on a go-forward basis to address the timely payment of all outstanding invoices. These assurances were passed on to both entities by me and they both continued in good faith to provide services as requested. I respectfully encouraged and requested the patience and support of these entities based on our various discussions and your assurances. I documented several of these communications at the time. Attempts have apparently been made, with no resolution to date, to restructure the Viron agreement. No attempts have been made to restructure anything with ICPE, nor have any payments been made. This seems very unusual, since the other engineering firm, GETS, has been paid in full over the objection of the General Partner, as it was the firm that prepared the inaccurate cost estimates.

As the General Partner has repeatedly advised and directed, resolution of the Viron contract and utilization of its services will provide the best possibility for acquiring the necessary changes to the Consol documents to be in compliance with the PLR. Synfuel has attempted to delay Viron from pursuing legal action as long as possible, but at this point in time, I have run out of excuses and explanations on behalf of the Partnership.

In regard to pellet plant production, since Palmer took over management responsibility for the Robena project, we have only seen a nominal increase in plant production and pellet quality remains the same. Considering the fact that prior to the management change, the project operated without a reliable source of coal fines, and had recently negotiated two reliable sources of coal fines from Consol and Mather, as a result of the work efforts of Synfuel and Viron, the partnership anticipated a significant improvement in plant production and operations and consistent pellet quality. Unfortunately, while costs have been decreased, the hoped for improvements have not been realized to date. Synfuel has seen no information from Palmer regarding the reasons for these results or its present and future plans.

Finally, in late 1999, Synfuel visited the site and sent letters to Palmer requesting information and advising it regarding various observed and anticipated problems and issues which needed immediate resolution or attention. In its response to these letters, Palmer became defensive, and essentially pointed the finger at others. Synfuel believes there has been little value in its attempts to provide guidance to Palmer or even make inquiries, as Palmer clearly believes everything is under control and the General Partner's input is not wanted and, when given, is believed to be of no value. The General Partner is still unaware of specific actions taken on several of these referenced issues. Palmer's pattern of communication continues to be a concern of Synfuel. It appears to Synfuel that Palmer is disregarding Synfuel's directions and input and

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-> ALPINE COAL CO., INC.; Page 4
P.04

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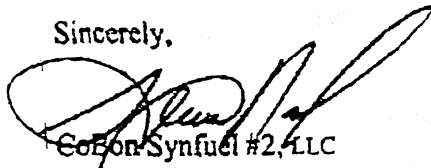
PAGE 5

Mr. Robert T. Dulcoba
February 16, 2000
Page 4

may have even sought and obtained an independent charge from you with regard to these important issues. Candidly, Synfuel is growing weary of the apparent charade in which Synfuel is the General Partner, when in reality, Providian exercises management control and is performing the role of the general partner, with Palmer as its manager. Palmer continues to demonstrate no willingness to provide any significant accountability to the General Partner. Synfuel continues to be concerned with this aspect of the project management given, among others, the tax ramifications of such a course of conduct.

We would like very much to discuss these items in detail and be advised of your intentions. Please give me a call at your earliest convenience.

Sincerely,



Gordon Synfuel #2, LLC
General Partner
Steven Nash

Attachments

cc: Gordon Deane, Palmer
Rick Visovsky, Viron
Mark Rodak, Viron
Anton Tonic, ICPE

Tab U

CoBon Synfuel #2, L.L.C.

1145 East South Union Avenue
Suite 100
Midvale, UT. 84047
Telephone: (801) 255-5545
Fax: (801) 255-5666

March 15, 2000

Mr. Gordon Deane
Palmer Management Corporation
13 Elm Street, Suite 200
Cohasset, MA 02025-1828

SENT VIA Fax & Overnight Mail

Re: Viron Energy v. Robena L.L.C., Civil Action No. 1999-7141

Dear Gordon:

This letter is in regard to letters sent to CoBon Synfuel No. 2, LLC ("Synfuel") dated 12/23/99 and 3/6/2000 from Jeffrey M. Bernstein, Esq. Specifically, these letters concern the ongoing litigation between Viron Energy, LLC ("Viron") and Robena, LLC ("Robena"). Synfuel is communicating directly with Palmer Management Corporation ("Palmer"), rather than with Mr. Bernstein, inasmuch as Palmer is managing this litigation and Synfuel has no relationship with Mr. Bernstein. More importantly, while Synfuel is aware that Mr. Bernstein's firm was asked to and did amend the registered agent/office designations for Robena, Synfuel has no knowledge regarding Mr. Bernstein or his firm's, or any other specific firm's, involvement in the referenced proceedings. Synfuel cannot furnish potentially privileged and/or sensitive information to a third party without guidance from Palmer, including information as to who such party is and confirming the specific role of such party in this matter. To this end, please advise Synfuel at your earliest convenience regarding the role, if any, of Mr. Bernstein/his firm, the specific scope and purpose of any retainer agreement(s) (i.e., parties to such retainer(s), local counsel retainer(s), and precise nature and scope of representation) as well as the current status of this matter, including settlement prospects, potential witnesses, scheduling orders (i.e., discovery deadlines, trial dates, etc.) and other pertinent information. This information is necessary from Palmer before Synfuel can effectively and safely communicate with any third party involved in the case. Of course, to the extent a settlement of the Viron dispute is or can shortly be obtained, the time and expense of further addressing the issues herein may be avoided.

Response to Bernstein Accusations and Retention of Counsel.

The substance and tone of Mr. Bernstein's letters, with which Synfuel disagrees, are of particular interest, as Synfuel has had no direct dealings with Mr. Bernstein, other than as referenced above. Mr. Bernstein has clearly been misinformed on a variety of issues regarding which he has no knowledge and which are presumably well beyond the scope of any retainer he may have obtained herein. Ironically, does Mr. Bernstein understand that pursuant to the Synfuel/Palmer management agreement that Palmer was retained by and works for Synfuel, and that he thereby would be working for Synfuel? The clearly negative tone of and unsupported innuendo in Mr. Bernstein's letters are adversarial at best and Synfuel questions the judgment of using such counsel to defend this case on behalf of the general partner.

Mr. Bernstein's bias and unfounded antagonism are evidenced by, among others, his December 23, 1999 statement that a letter enclosing paperwork to amend the registered office of Robena was sent "December 7, 1999", and his accusation that Synfuel's "continued delay" somehow compromised Robena's interests. These assertions are absurd. The December 7 letter was not even transmitted until December 15, 1999. Synfuel reviewed and signed the Certificate of Amendment of Registration on December 17, 1999 and transmitted it to counsel shortly thereafter. Robena's interests were not compromised and Synfuel did not breach any duty with regard thereto. Further, Mr. Bernstein's March letter is both unnecessarily caustic and factually and legally unfounded. As discussed herein and in other communications with Palmer, Synfuel has neither delayed providing information, nor violated any of its responsibilities relating to the project. Ironically, despite his expressions of urgency and his unilaterally imposed and unclear personal deadlines, Mr. Bernstein has not made a single attempt to call Synfuel to discuss any of the issues and Palmer has never had any discussion with Synfuel regarding reasonable discovery needs in the Viron litigation.

Despite Mr. Bernstein's disparaging statements, Synfuel has engaged in no "conspiratorial conduct" to undermine the project and has no reason to do so. As you know, Synfuel stands to lose millions if the project proves unsuccessful. Synfuel's sole interest is in seeing the facts in this matter truthfully presented and for the project to proceed without the politics, animosity and antagonism which has characterized the project in recent months. To this end, Synfuel's communications have been direct, truthful and candid. Notably, neither Synfuel's refusal to treat that portion of Viron's (and other vendors) payment demands, which were incurred prior to Palmer's assumption of management duties (i.e., approximately half of Viron's invoiced amount or \$30,000), as unfounded, nor its refusal to ignore Robena's good faith commitments with respect thereto, are improper or violative of any of Synfuel's duties.

In regard to Synfuel's February 16, 2000 letter to Mr. Dulebohn, Synfuel is preparing a response to Palmer's letter that will speak for itself. In any event, barring further information from Palmer regarding counsel herein, Synfuel seriously questions whether Mr. Bernstein can

Mr. Gordon Deane
March 14, 2000
Page 3

effectively fulfil the obligations of counsel for Robena under the circumstances, if he is to be or has been so retained.

Resolution of the Viron Complaint.

Synfuel reiterates that the Viron consulting fees incurred prior to Palmer's assumption of management duties (i.e., approximately \$30,000 or two months worth of the contested amount) should be paid. Of course, only Palmer can determine the value of services requested from and rendered by Viron after Palmer became involved and Synfuel would necessarily defer to Palmer's reasonable judgment with respect thereto.

While Synfuel has not been a party to any of the discussions or the ongoing negotiations between Palmer and Viron, based upon the faxes received, Synfuel understands Viron's latest settlement proposal calls for a one time \$100,000 payment to Viron upon Robena's acquisition (with the assistance of Viron) of the necessary modifications to the Consol agreements consistent with the PLR, after which Viron will terminate further services. Synfuel understands that the \$100,000 payment is contingent upon Viron's success (i.e. Viron will proceed at its own risk and get paid only if successful). While this seems like a reasonable proposal, Synfuel recommends Palmer negotiate the \$100,000 fee down to the extent possible. Nevertheless, regardless of such negotiations, Palmer should be prepared to pay Viron up to the full amount requested given the importance of resolving these issues. Given Viron's obvious political influence with Consol, Synfuel firmly believes Viron should be involved in the long term plans to maximize the likelihood of success for this project.

Transmission of Viron Related Documentation.

Notwithstanding the foregoing concerns, and since its receipt of the December letter, Synfuel has spent considerable time retrieving, reviewing and organizing records pertaining to Viron, its agreement with Robena and its historical provision of services to the Robena project. Most of the relevant documents are already in Palmer's possession (i.e., phone records, agreements, monthly reports, etc.). These documents were transmitted to Palmer in July 1999 (refer to the July 1, 1999 letter). Synfuel has nevertheless enclosed for Palmer's review (and potentially for its disclosure to duly retained counsel) additional copies of materials located to date. This process has been frustrating and time consuming to say the least, particularly in view of Synfuel's belief that the moneys sued for essentially have been and remain fairly due and payable. Other than Palmer's vague reference to the as yet unmodified agreements relating to the PLR (which was never guaranteed by anyone in the project), Synfuel has still not been furnished with any reliable factual basis for the non-payment. Prior to Palmer's assumption of management responsibilities herein, Viron was assisting Synfuel in acquiring the agreement changes for the PLR as an expansion of its services.

Summary of Viron Communications.

Synfuel has also prepared the following brief responses to the questions raised in Mr. Bernstein's December letter, based in part upon Synfuel's review of the subject documents. Obviously, trying to summarize "all verbal communications" is not practical as Synfuel and Viron personnel had regular ongoing communications concerning all aspects of the project during the time Synfuel provided management services. This fact is reflected in the documents to a large extent. Moreover, obtaining detailed information from Messrs. S. Reddington, R. Nash and other ICPE contract personnel involved at the time has been difficult as ICPE has still not been paid for its past services and none of these people are employed by Synfuel. Assuming the matter is not settled, deposition testimony may be necessary to tie down any details that may be required.

Item #1 - Robena's contractual arrangement with Viron consisted of a Letter of Understanding dated 5/19/98 between CoBon Energy, LLC ("CoBon") (the pre-closing project developer) and Viron. This Letter of Understanding was superceded immediately after the project closing by a Consulting Agreement letter dated 7/1/98 between Robena and Viron. Copies of both documents are enclosed. These documents were the result of rather extensive and at times hostile negotiations between Viron and CoBon/Robena representatives.

Item #2 - As set forth in the letter agreement, the services originally contracted for from Viron included the identification, evaluation and obtaining of a suitable raw material supply of coal fines to be utilized during the startup phase and until the wash plant is constructed and operating. Though not referenced in the letter specifically, Viron was also responsible for arranging for and coordinating sales of all coal pellets produced, for attending all coordination meetings at Consol and interfacing with Consol management, and for coordinating trucking for coal fines to the site, for coal pellets from the site and for stockpiling and inventory management at the site.

The foregoing scope of services was later refined to also include interceding and assisting as required to resolve union labor issues, assisting with permit compliance and obtaining new permits as required for operation of the wash plant, assisting with PLR issues, meeting with operations personnel to identify and address operations problems, and arranging for all raw material coal fines and final product coal pellet testing. A more detailed listing of the services actually provided by Viron was included in the letter to Palmer dated July 1, 1999. Synfuel understood that Palmer would continue to utilize Viron in this capacity after it assumed management responsibilities.

The various services and the manner and success whereby Viron provided such were the subject of ongoing dialogue between the parties. Many of the services were provided to address specific and unforeseeable problems encountered during the initial year of plant operations.

Mr. Gordon Deane
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Page 5

While Viron at times sought additional payments for its services and while the scope of services provided was considerably expanded from that initially contemplated, the monthly fee was never increased by Synfuel.

Item #3 - Synfuel was unable to locate any documents pertaining to the formation of Viron. Synfuel has no specific knowledge concerning the formation, the ownership and history thereof at this time.

Item #4 - Copies of all progress reports furnished to Robena are included in the documents enclosed. Written reports were received in most cases on a monthly basis, although it should be noted that during some months, written reports were not prepared. Telephone conversations and conferences were held on a regular basis, often several times per week to discuss project operations and issues status, raw material supply status, coal pellet sales status, union issues, equipment issues, personnel issues, permitting issues, proposed changes to operations procedures, etc. related to the ongoing project. Regular site visits were completed, samples were drawn and photographs were taken of progress from time to time by Viron and/or relating to the project. The parties' communications involved various representatives of Synfuel and Viron, including, S. Reddington, R. Nash, S. Nash, M. Rodak, R. Visovsky, counsel, as well as Consol personnel and other vendors, often depending upon the particular issues under consideration at any given time.

Item #5 - Refer to Item #1 for this information.

Item #6 - Viron invoiced Robena on a monthly basis. Copies of all invoices are enclosed. A monthly fee of \$15,000 was established for the services of both Mark Rodak and Rick Visovsky on behalf of Viron as required for professional consulting up to a full time commitment, if necessary, to satisfy project requirements. Viron functioned as coal experts in all aspects of the project and were integral to the development and operations of the project because of their experience and industry relations. This fee also covered all expenses. Considering the fact that both individuals were onsite at least two to three days every week, and often worked on weeknights and weekends, expenses possibly account for \$3,000 to \$4,000 of this monthly retainer, leaving a balance of \$11,000 to \$12,000 for salary. At a 50% commitment, this is equivalent to \$69.00/hr and at a 100% commitment, this is equivalent to \$35.00/hr. Considering that this cost included all overhead and other burdens, this level of monthly retainer was believed to be reasonable for the services to be provided.

Item #7 - No other applicable information has been located in the Synfuel files to date.

While Synfuel continues to review available files for relevant materials, enclosed are copies of the following support documents found to date relating to Robena in chronological order. Hopefully, this matter can be resolved so that further research will not be necessary.

Mr. Gordon Deane
March 14, 2000
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1. April 8, 1998 Letter
2. April 8, 1998 Letter
3. May 8, 1998 Robena Fines Acquisition
4. May 12, 1998 Robena Coal Fines Acquisition
5. May 18, 1998 Letter of Understanding
6. May 26, 1998 Fax
7. June 1, 1998 Fax - Robena Project Monthly Status Report
8. June 15, 1998 Coal Supply Letter
9. June 15, 1998 Fax
10. June 15, 1998 Fax
11. June 15, 1998 Fax
12. June 26, 1998 Fax - Invoice
13. July 1, 1998 Consulting Agreement
14. July 1, 1998 Fax - Robena Project Monthly Status Report
15. July 20, 1998 Fax
16. July 31, 1998 Fax - Invoice
17. Aug. 6, 1998 Fax - Robena Project Monthly Status Report
18. Sept. 1, 1998 Fax - Robena Project Monthly Status Report
19. Sept. 14, 1998 Fax
20. Sep. 25, 1998 Letter
21. Oct. 5, 1998 Fax - Invoice
22. Oct. 9, 1998 Fax - Robena Project Monthly Status Report
23. Oct. 23, 1998 Cost Projections
24. Nov. 2, 1998 Fax - Robena Project Monthly Status Report & Invoice
25. Dec. 7, 1998 Fax - Robena Project Monthly Status Report
26. Dec. 7, 1998 Fax - CTE Expenses, Filiagi Loader
27. Dec. 7, 1998 Fax - Pond Reclamation
28. Dec. 8, 1998 Fax - Invoice
29. Dec. 8, 1998 Fax - CTE Tests
30. Jan. 11, 1999 Fines Purchase
31. Jan. 25, 1999 Fax
32. Jan. 26, 1999 Fax - Demo Costs
33. Jan. 29, 1999 Fax - MCN
34. Feb. 11, 1999 Fax
35. Feb. 11, 1999 Fax
36. Feb. 11, 1999 Fax
37. March 10, 1999 Fax - Robena Project Monthly Status Report
38. March 12, 1999 Fax - Quote

Mr. Gordon Deane
March 14, 2000
Page 7

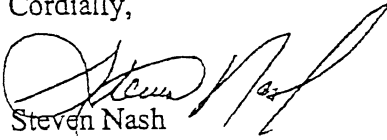
39. March 12, 1999 Fax - PLR
40. March 26, 1999 Fax - Multotec
41. April 7, 1999 Fax - Invoice/Covol Mtg.
42. April 12, 1999 Fax
43. April 13, 1999 Cost Projections
44. April 22, 1999 Wash Plant Options
45. April 30, 1999 Memorandum
46. May 6, 1999 Process Plant Operations
47. May 13, 1999 Memorandum
48. May 19, 1999 Preptech Letter
49. May 20, 1999 Recovery Plan
50. May 24, 1999 Shipping Expenses
51. May 26, 1999 Wash Plant Budgets
52. May 26, 1999 Bypass Conveyor
53. June 2, 1999 Fax - Work Efforts
54. June 10, 1999 PBS P.O.
55. June 23, 1999 Fax
56. June 25, 1999 Equipment Repossession
57. June 25, 1999 Weeks Production
58. June 25, 1999 Coal Purchase
59. June 28, 1999 Monthly Status Report
60. June 29, 1999 Customs
61. July 1, 1999 Invoice
62. July 27, 1999 Fax
63. Aug. 1, 1999 Invoice
64. Aug. 2, 1999 Schedules C & D
65. Aug. 3, 1999 Fax
66. Aug. 5, 1999 Fax
67. Aug. 6, 1999 Fax
68. Aug. 18, 1999 Fax
69. Aug. 20, 1999 Fax
70. Aug. 23, 1999 Fax - MSDS
71. Aug. 24, 1999 Proposed Wash Plant
72. Sept. 1, 1999 Fax
73. Sept. 1, 1999 Termination Letter
74. Sept. 9, 1999 Fax -CTE
75. Sept. 10, 1999 Fax
76. Sept. 15, 1999 Fax
77. Sept. 16, 1999 Fax
78. Nov. 10, 1999 Demand Notice

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Page 8

Regarding the timing of discovery herein, you might recall asking Synfuel in December to try to get Viron to back off its pursuit of this lawsuit until the wash plant was constructed and operational. In response, Synfuel contacted Viron to discuss the dispute and to specifically explore a means of delaying the case. Viron expressed a willingness to engage in a settlement dialogue with Palmer and to delay prosecution of the action in the interim. Synfuel thereafter encouraged Viron and Palmer to settle the dispute and to agree to consulting terms on a go forward basis. While Palmer has not specifically advised Synfuel regarding its discussions, Synfuel has been of the impression that the case has been on hold. Of course, Synfuel remains willing to assist in resolving this matter so Robena can move forward with the more pressing issues of production, operations and marketing.

Please advise Synfuel when this issue has been resolved or if further assistance is required. Synfuel looks forward to a written report from Palmer regarding this matter as well the other matters.

Cordially,


Steven Nash
Manager

Enclosures

cc: Robert Dulebohn, Providian
Maria Gray, Esq., OHS

Tab V

CoBon Synfuel #2, L.L.C.

1145 East South Union Avenue
Suite 100
Midvale, UT. 84047
Telephone: (801) 255-5545
Fax: (801) 255-5666

March 17, 2000

Mr. Gordon Deane
Palmer Management Corporation
13 Elm Street, Suite 200
Cohasset, MA 02025-1828

SENT VIA Fax

Re: Response to February 20, 2000 Letter

Dear Gordon:

While I am still awaiting comments from Rob to my February 16, 2000 letter, this letter is to clarify several assertions in your February 20, 2000 communication.

Viron Proposal

Regarding Synfuel's recommendation on the Viron proposal, please refer to the Synfuel letter dated March 15, 2000 (Re: Viron Energy v Robena, LLC). In an attempt to put the Robena project into perspective, please also consider the following. Consol produces and sells approximately 70 million tons of coal per year. Under ideal circumstances, Robena could produce up to 600,000 tons of coal pellets per year. This amount represents less than one percent (0.86%) of the overall Consol production. From this perspective, it is obvious that the Robena project is a relatively insignificant dot on Consol's radar screen. The primary reason that this project was allowed to be constructed on a Consol site and that Consol has been willing to pursue this engagement was the long term relationship that existed between Rick Visovsky and Consol upper management. Synfuel will reiterate that an agreement between Palmer and Viron is believed to be critical to the long term success of the project. Palmer's inability to date to acquire the necessary changes to the Consol agreements for compliance with the PLR evidences the fact that employing the political influence of Viron may well be the only way Robena will successfully acquire the contractual changes.

Mr. Gordon Deane
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ICPE Project Financing and Ownership

The ownership of ICPE is a simple question that has been disclosed in numerous documents. You have either failed to review such historic documents or you chose to ignore their import. Your statement in your letter that as an officer and owner of ICPE that I could easily answer the question, but, to date, have refused to do so is simply not true. Frankly, I was unaware that you did not know. Rob Dulebohn of Providian and Maria Grey and Greg Riddle of OHS have been well aware of the initial financial support by and ownership of ICPE since well prior to project closing in June 1998. I have had detailed discussions with Bob Jeswain of Topel Forman during the audit of Robena and provided him an overview of the ownership of all of the entities involved, including ICPE. Your partners, Don Logan and Tom Linden of Coalco are also very aware of the ownership of ICPE, as disclosed prior to and in connection with the closing of the partnership. Ironically, Coalco was the financial advisor and was directly involved in such disclosures. While I find it difficult to believe, it seems that you are the only one that is not aware of the ownership and your insinuation that Synfuel has not disclosed, or refuses to disclose this information is totally inaccurate. On July 1, 1999, Synfuel sent Palmer one of many letters containing a significant amount of relative project information. Included with that letter was a copy of the Request for PLR letter (dated 3/25/98) and follow-up correspondence (see Item 13 on page 10 of the 7/1/99 letter). Attached is a copy of page 4 of the PLR letter wherein the ownership of ICPE is disclosed. This is one of many places wherein the ownership is disclosed. If you have lost your copy, please let me know and Synfuel can send you another copy. Hopefully this satisfies your concerns.

Other Agreements Provided to Palmer Which Palmer Has Lost

Your accusations that Synfuel has somehow violated representations, warranties and covenants regarding Schedule A, and has not performed reasonable due diligence regarding the disclosure of all documents which could have a material effect on the operation and management of the Project, the Project Company or the Partnership or otherwise affecting Managing Agent's duties under this Agreement are unsupportable. You requested that we reconcile these representations and warranties with these new "agreements" which have recently surfaced. Let me refresh your memory and set the record straight. On July 29, 1999, you had a telephone conversation with Robert Nash and Shawn Reddington, wherein fifteen (15) items and associated supporting documents were discussed in detail. Two of the specific agenda items discussed involved the very issues which you charge have recently surfaced. A letter outlining the telephone conversation and copies of all of the documents discussed were sent to you. A second copy of the letter is enclosed. Item #9 - Robena, LLC letters dated 6/29/99 and 7/12/99 and ICPE letter dated 7-2-99 and Item #12 - Robena, LLC letters dated 5/20/99 and 6/2/99 and ICPE letter dated 5/26/99 are specifically referenced and were not only discussed, but also copies thereof were provided to you at that time. I might also add that both of these items were specifically included as separate line items (line 32 and line 49) of the Wash Plant Budget that you prepared (a copy of which is also attached). No new "agreements" have recently surfaced. Once again

Mr. Gordon Deane
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your apparent bias and ill will toward Synfuel has clouded your memory. I was glad to see that even in spite of your memory lapse, you acknowledged that Shawn has been actively involved in the project and has been supportive of the work. In the future, please check your files before accusing Synfuel of fabricating documents. Your management duties certainly include such minimal due diligence. A simple phone call could have avoided what has turned into an unnecessary letter campaign on your part.

Role of Don Dargie

Since you indicated that you did not understand Synfuel's comments about Don Dargie's experience, Synfuel's concern, as simply restated from the last letter, was that since the termination of services by ICPE, there has not been a qualified and licensed engineering firm under contract to review, respond and take responsible charge for the technical design issues related to construction of the wash plant. From your communications, Synfuel now understands that Palmer has confirmed such and that Don Dargie, as a professional engineer with significant related experience is providing these services. Based thereon, Synfuel understands that another engineering firm is not required to provide these services. Please advise if this is not the case.

Last summer and fall, Shawn Reddington discussed the need to visit the wash plant construction site on numerous occasions with Don Dargie and Don agreed with and encouraged Shawn to make site visits. In every case when a funding request was made to Palmer to pay for Shawn's travel costs, these were denied. Palmer prevented Shawn from visiting the site by refusing to authorize his travel expenses. Under such circumstances, Palmer's accusation that "ICPE claimed to provide construction oversight but never left Utah," is misleading and unfounded.

ICPE Payment

With respect to the ICPE invoices, Synfuel does not see any relevance to your comment that "very little, if any, of the work that ICPE claims to have performed was ever used or even useable by F&P" or that the work was "inaccurate." Of course, none of the work was useable since the "two building" concept was abandoned (with the approval of Palmer) in favor of the (cost cutting) "single building" concept to house both the deslime and beneficiation plants. However, that does not change the fact that the work was done. Have you forgotten that the deslime plant was under construction when Providian stopped funding? Obviously, construction does not precede engineering. ICPE provided the services when requested and as requested. ICPE is simply not responsible for change orders or decisions affecting the direction of the project.

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Because ICPE and F&P provided engineering services on different designs, your claim that F&P had to “redo” ICPE’s work is simply untrue. Further, the sunken engineering costs associated with the “two building” concept were discussed with Palmer and were specifically included in the wash plant budget (see line item 37).

Regarding your reference that a “cloud of a ‘related party’” hangs over ICPE’s head, nothing could be further from the truth. Refer to Section 5.1 (iii) of the Partnership Agreement which describes the authority of the General Partner to employ a related party, as referenced above. Providian was completely aware of the relationship and role of ICPE. Your attempt to make this seem to be a surprise to everyone is puzzling.

Response to December 9 Letter

Synfuel was not disingenuous in suggesting that the dike is a new issue. All parties, including Palmer and Synfuel, were aware of the dike work on the upper portion of Pond 4. It is the work on the lower portion that is alarming. The intent of Synfuel’s comments was to candidly express concern that the dike construction has proceeded well beyond what Synfuel had been led to believe would occur by Consol. Synfuel is not suggesting that this problem was Palmer’s making. It seems that Consol is simply dumping its coarse refuse on Pond 4, rather than transporting it up the hill to the top of the existing coarse refuse disposal area. This appears to be a way for Consol to cut operation costs. This action by Consol is going to have a significant negative impact on Robena recovery costs for material and the quantity of the reserves from Pond 4 and Synfuel is requesting that Palmer, as the managing agent, investigate Consol’s intentions and attempt to mitigate the impact if possible. Please advise as progress in this area is attained.

While not specifically directed to Palmer, Synfuel’s comments regarding the PLR were included with Hill, Johnson & Schmutz’s comments in its letter to Palmer.

Transfer of \$300,000 from Utah to Boston Bank

Synfuel is communicating with the limited partner in this regard and expects this issue will be resolved shortly.

Synfuel Interest in Project

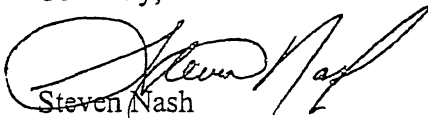
Synfuel disagrees with your characterization that you have received no direction or support from Synfuel and that it occasionally surfaces with a 3-4 page letter suggesting poor management and complaining about ICPE and Viron not getting paid and that you wonder how this is helpful to the project. Further, in the final paragraph of your letter, you state that Synfuel

Mr. Gordon Deane
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Page 5

continues to show disinterest in the project except for ICPE and Viron bills. Nothing could be further from the truth. As previously stated in this letter and numerous other letters, the sole purpose of Synfuel is to work for the success of this project. The ICPE bill represents a huge financial liability to the partnership which, if not resolved, will result in a lien on the project which could effectuate a notice of default from Consol. Synfuel considers this to be an extremely important issue which Palmer has refused to acknowledge and resolve. Synfuel understands and appreciates Palmer's reasonable due diligence regarding past services, however, making no effort to pay for anything seems to be an unreasonable and risky approach. Likewise, the Viron termination and subsequent complaint also represent a huge loss of a valuable resource which, if not resolved soon, could be lost forever with little or no hope for any political influence to acquire the necessary changes to the Consol agreement for conformance with the PLR, thus making the PLR issued of no value. As Synfuel advised at the outset, the time and energy devoted to these issues has exceeded the claim, not to mention the ill will fostered by Palmer with these vendors in the process.

Please feel free to contact me if you have any questions concerning any of the foregoing matters.

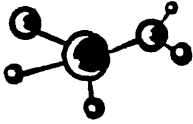
Cordially,


Steven Nash
Manager

Enclosures

cc: Robert Dulebohn, Providian
Maria Gray, Esq., OHS

Tab W



CoBon Energy, L.L.C.

1145 East South Union Avenue
Midvale, Utah 84047
Telephone: (801) 255-6666
Fax: (801) 566-0088

May 24, 2000

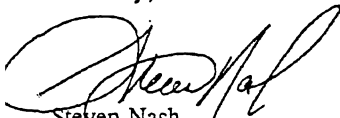
Mr. Rick Visovsky
AGTC, Inc.
7 Oakwood Way
Robbinsville, NJ 08691

Re: Advance Payment for Pace and/or PBS Tax Credit Payments

Dear Rick:

Please find enclosed a check for ten thousand dollars (\$10,000.00). This check is an advance payment for anticipated Pace and/or PBS tax credit payments due to AGTC. Based upon pro-forma calculations provided by Covol, we do not anticipate receipt of any tax credit payments from Pace until early 2001. We do, however, anticipate a payment from the closing of the PBS project sometime near June 1, 2000. This enclosed advance payment will be offset against payment(s) due to AGTC at the receipt of the earliest payment received from either Pace or PBS. Hopefully, this advance payment will help with your immediate cash flow requirements.


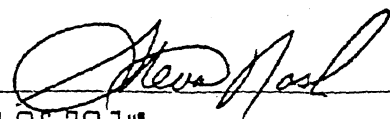
Sincerely,



Steven Nash
Manager

SN/lj

Enclosure

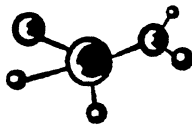
COBON SYN FUEL #3 LLC 801-255-6666 1145 E SOUTH UNION AVE MIDVALE UT 84047	 KeyBank National Association Midvale, Utah 84047 1-800-KEY2YOU	102 31-73/1240 55
DATE <u>MAY 23, 2000</u>		
PAY **THE SUM OF 10,000 DOLLARS AND 00/CENTS***** DOLLARS \$ **10,000.00**		
TO THE ORDER OF AGTC INC		
		
@000102@ 124000737 440551406703		

COBON SYN FUEL #3 LLC
MIDVALE UT 84047

DETACH AND RETAIN THIS STATEMENT
 THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
 IF NOT CORRECT, PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED

DATE	DESCRIPTION	AMOUNT
5/23/00	ADVANCE TAX CREDIT PAYMENT	
		\$10,000.00

Tab X



CoBon Energy, L.L.C.

1145 East South Union Avenue
Midvale, Utah 84047
Telephone: (801) 255-6666
Fax: (801) 566-0088

May 24, 2000

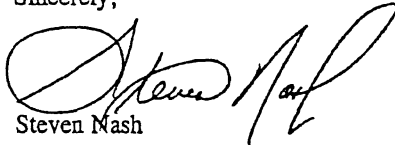
Mr. Mark Rodak
Alpine Coal Company, Inc.
3920 Market Street
Camp Hill, PA 17011

Re: Advance Payment for Pace and/or PBS Tax Credit Payments

Dear Mark:

Please find enclosed a check for ten thousand dollars (\$10,000.00). This check is an advance payment for anticipated Pace and/or PBS tax credit payments due to Alpine Coal Company, Inc., based upon pro-forma calculations provided by Covol, we do not anticipate receipt of any tax credit payments from Pace until early 2001. We do, however, anticipate a payment from the closing of the PBS project sometime near June 1, 2000. This advance payment will be offset against payment(s) due to Alpine. at the receipt of the earliest payment received from either Pace or PBS. Hopefully, this advance payment will help with your immediate cash flow requirements.

Sincerely,



Steven Nash
Manager

SN/lj

Enclosure

COBON SYN FUEL #3 LLC

801-255-6666
1145 E SOUTH UNION AVE
MIDVALE UT 84047



KeyBank National Association
Midvale, Utah 84047
1-800-KEY2YOU

103

DATE MAY 23, 2000

31-73/1240
55

PAY **THE SUM OF 10,000 DOLLARS AND 00/CENTS***** DOLLARS \$ **10,000.00**

TO
THE
ORDER
OF

ALPINE COAL COMPANY INC

⑈000103⑈ ⑆124000737⑆ 440551406703⑈

COBON SYN FUEL #3 LLC
MIDVALE UT 84047

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT, PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED

DATE	DESCRIPTION	AMOUNT
5/23/00	ADVANCE TAX CREDIT PAYMENT	
		\$10,000.00

A2

CE-075581

Tab Y

AGTC, Inc. & Alpine Coal Company, Inc.

Contractual Entitlement in Accordance With Consulting
Agreement Dated 12/05/96 and Allocation of CoBon License
Agreement Capacity

07/22/02

Payments Due AGTC/Alpine Based On PBS/Somerset Production: 1999 - 2001

<u>Year</u>	<u>Tons Produced (See Note 1)</u>	<u>Earned Royalty Payment - \$3.50/Ton</u>	<u>Somerset Contingent Payment (See Note 2)</u>	<u>Annual Production</u>	<u>Entitlement Based on 467,520 tpy License Basis</u>	<u>Annual Production X \$0.45 X %</u>
1999	12,397.30	\$0.00		12,397.30	100%	\$5,582.50
2000	461,589.73	\$740,564.06		461,589.73	100%	\$207,853.86
2001	467,520.00	<u>\$761,320.00</u>		1,411,299.00	33%	\$210,524.26
Total		<u>\$1,501,884.06</u>	<u>\$423,960.62</u>	1,885,286.03		\$423,960.62

Notes

1 - AGTC/Alpine entitled to payments based upon 467,520 tons/year at PBS/Somerset

2 - Estimated amount based upon payment of \$850,000 for production of 12,397 tons in 1999, 461,589 tons in 2000 and 1,411,299 tons in 2001
This equates to a \$0.45 per ton payment received from Somerset (1,885,286 tons X \$0.45/ton = \$850,000) on all tons produced and sold in 2001
The amount shown, for calculation of the amount due to AGTC/Alpine, has been adjusted in accordance with the 467,520 ton per year allocation

2.88/ton on 1st 250,000

250 - 467,000 (3.50) 217,000

467,000 - 650,000 (3.50)

650,000 - ? 2.50 { 0.40 (Cobon)

AGTC/Alpine Earned Royalty & Contingent Payment Schedule From PBS/PP&L - 2002 Production

1	Month	January	February	March	April	May	June	July	August	September	October	November	December	Total
2	Monthly Production (See Note 1)	126,718.20	142,807.32	166,352.32	166,765.39	154,870.64	157,659.19							915,173.06
3	0-250,000 Exempt (See Note 2)	20,833.33	20,833.33	20,833.33	20,833.33	20,833.33	20,833.33	20,833.33	20,833.33	20,833.33	20,833.33	20,833.33	20,833.33	250,000.00
4	217,520 tons @ \$3.50/ton (See Note 3)	18,126.67	18,126.67	18,126.67	18,126.67	18,126.67	18,126.67	18,126.67	18,126.67	18,126.67	18,126.67	18,126.67	18,126.67	217,520.00
5	Contingent Payment for 0-250,000 Tons (See Note 4)	\$20,416.78	\$18,116.56	\$15,552.40	\$15,513.88	\$16,705.41	\$16,409.94							\$102,714.97
6	Earned Royalty Payment @ \$3.50/ton X tons in Line 4	\$63,443.33	\$63,443.33	\$63,443.33	\$63,443.33	\$63,443.33	\$63,443.33							\$380,660.00
7	Total Payment/Month (Sum of Line 5 + Line 6)	\$83,860.11	\$81,559.90	\$78,995.73	\$78,957.21	\$80,148.74	\$79,853.27							\$483,374.97
8	Amount Due AGTC/Alpine (30% X Line 7)	\$25,158.03	\$24,467.97	\$23,698.72	\$23,687.16	\$24,044.62	\$23,955.98							<u>\$145,012.49</u>

Notes:

1 - Production shown is the actual reported monthly production sold.

2 - The first 250,000 tons of production, for which the payment is made separately, has been amortized by PP&L over 12 months and the amounts in this line are deducted from the actual monthly production reported in line 2.

3 - The CoBon licensed tonnage associated with PBS, as it relates to payments in accordance with the Consulting Agreement, is limited to 467,520 tons per year of Synfuel production. Therefore, the amount in excess of 250,000 tons/year is 217,520 tons on which payment is due, after taking into account the PP&L amortized payment method. The amount paid per ton for the 217,520 tons is \$3.50 per ton.

4 - The percentage of the payment due to AGTC/Alpine, based upon the amount received by CoBon from Somerset Synfuel, LLC, has been adjusted to reflect the percentage of the payment associated with each month's portion of the 467,520 tons of annual production. The amount shown is an estimated amount due. It should be noted that once the 4th quarter production has been finalized and a payment has been received based upon said production, an annual adjustment will be made based upon the actual annual production.

228,396
 210,284
 63,115
 428,700
 88

228,396
 63,115
 291,511

Consulting Agreement Distribution Summary

Summary of Payments Received By CoBon For Distribution to AGTC/Alpine

<u>Date</u>	<u>Description of Payment</u>	<u>Period</u>	<u>Amount Received</u>
9/14/2001	Pace Earned Royalty	1st Quarter 2001 (See Note 1)	\$250,036.30
1/14/2002	PBS/Somerset Contingency (\$2.88/ton)	01/01/99 - 12/31/01 (See Note 3)	\$423,960.62
12/7/2001	PBS/Somerset Earned Royalty (\$3.50/ton)	01/01/99 - 09/30/01 (See Note 4)	\$1,501,884.06
4/15/2002	PBS/Somerset Earned Royalty (\$3.50/ton)	1st Quarter 2002 (See Note 4)	\$190,330.00
4/15/2002	PBS/Somerset Contingency (\$2.88/ton)	1st Quarter 2002 (See Note 3)	\$54,085.74
7/15/2002	PBS/Somerset Earned Royalty (\$3.50/ton)	2nd Quarter 2002 (See Note 4)	\$190,330.00
7/15/2002	PBS/Somerset Contingency (\$2.88/ton)	2nd Quarter 2002	\$48,629.23
		Total Received	\$2,659,255.95
	CoBon Expenses To Date (See Note 5)	01/01/97 - 12/31/01	(\$523,064.39)
	Contract Retainage (See Note 6)		(\$525,000.00)
	Balance For Distribution		\$1,611,191.56
	30% For AGTC and Alpine		\$483,357.47
	Advances Made to Date		(\$503,000.00)
	Balance Due		<u>(\$19,642.53)</u>

Advances Made To Date

<u>Date</u>	<u>Amount Paid To AGTC</u>	<u>Amount Paid To Alpine</u>
8/4/1997	\$25,000.00	(See Note 2)
9/4/1997	\$20,000.00	(See Note 2)
10/14/1997	\$10,000.00	(See Note 2)
1/1/1998	\$10,000.00	(See Note 2)
5/23/2000	\$10,000.00	
5/23/2000		\$10,000.00
8/30/2001		\$10,000.00
11/29/2001	\$20,000.00	
11/29/2001		\$20,000.00
12/31/2001	\$125,000.00	
12/31/2001		\$115,000.00
12/31/2001	\$64,000.00	
12/31/2001		\$64,000.00
	\$284,000.00	\$219,000.00

Notes:

- 1 - This amount assumes the payment is based upon 500,000 tons of annual production. The amount will be adjusted based upon confirmation requested from Headwaters of actual production basis. The exact quarter upon which this payment is based is also unknown at this time. It has been assumed that it is based upon 1st quarter 2001 production.
- 2 - This amount paid was to be equally split between AGTC and Alpine as an advance consulting fee payment. For purposes of the equity of the distributions made, in addition to the sum of the amounts noted, both parties should have received equal payment.
- 3 - See attached proration of amount received from Somerset Synfuel, LLC to adjust for licensed amount of 467,520 ton/year production.
- 4 - See attached proration of amount received from PP&L to adjust for licensed amount of 467,520 ton/year production.
- 5 - See attached CoBon Energy, LLC Expense Summary (01/01/97 - 12/31/01)
- 6 - CoBon is entitled to recover \$700,000 in expenses incurred prior to 1997 in accordance with the Consulting Agreement. **To date, CoBon has recovered \$350,000 from amounts received in 2001 and \$175,000 (\$350,000 X 1/2 based on first two quarters of 2002 receipts).** This is based upon CoBon's **stated willingness to spread the recovery** of these expenses due over a two year period, rather than up front as specified in the Agreement.

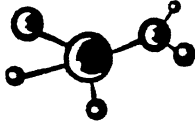
CoBon Energy, LLC Expense Summary (01/01/97 - 12/31/01)

DATE	NUMBER	PAYEE	ACCOUNT	MEMO	PAYMENT
01/01/97	1005	State of Utah	Licenses and Permits	Annual Fees	\$200.00
03/01/97	1006	Holme, Roberts & Owen, LLP	Professional Fees: Legal Fees	Legal Fees	\$500.00
07/01/97	1008	Holme, Roberts & Owen, LLP	Professional Fees: Legal Fees	Legal Fees	\$1,500.00
07/03/97	1007	Walter N. Heine & Assocs.	Licenses and Permits	Environmental Permit - PBS Coals	\$4,806.77
08/04/97	1009	AGTC, Inc.	Subcontracts - Consulting	Consulting Advance (Paid to AGTC, to be divided between AGTC & Alpine)	\$25,000.00
08/04/97	1010	Commonwealth of PA - Clean Air Fund	Licenses and Permits	Air Quality Permit - Application Fee, PBS Coals	\$1,200.00
08/20/97	1012	State of Utah	Licenses and Permits	Annual Fees	\$10.00
09/04/97	1013	AGTC, Inc.	Subcontracts - Consulting	Consulting Advance (Paid to AGTC, to be divided between AGTC & Alpine)	\$20,000.00
10/05/97	1015	Walter N. Heine & Assocs.	Licenses and Permits	Environmental Permit - PBS Coals	\$3,000.00
10/05/97	1016	Holme, Roberts & Owen, LLP	Professional Fees: Legal Fees	Legal Fees	\$500.00
10/05/97	1017	Department of State - PA.	Licenses and Permits	Application Fee for Registration as a Foreign LLC	\$180.00
10/09/97	1019	Commonwealth of PA - Clean Air Fund	Licenses and Permits	Air Quality Permit - Application Fee, PBS Coals	\$1,200.00
10/14/97	1020	AGTC, Inc.	Subcontracts - Consulting	Consulting Advance (Paid to AGTC, to be divided between AGTC & Alpine)	\$10,000.00
01/01/98	1021	Commonwealth of PA - Clean Air Fund	Licenses and Permits	Air Quality Permit - Application Fee, Mon View Coals	\$1,200.00
01/01/98	1024	AGTC, Inc.	Subcontracts - Consulting	Consulting Advance (Paid to AGTC, to be divided between AGTC & Alpine)	\$10,000.00
01/01/98	1025	Walter N. Heine & Assocs.	Licenses and Permits	Environmental Permit - Robena	\$4,965.68
01/01/98	1026	YT3N, LLC	Rent	Rent - 1/98 & 2/98	\$800.00
02/11/98	1027	Utah Dept of Commerce	Licenses and Permits	Annual Fees	\$20.00
02/11/98	1028	Utah Dept of Commerce	Licenses and Permits	Annual Fees	\$20.00
02/11/98	1029	Utah Dept of Commerce	Licenses and Permits	Annual Fees	\$20.00
02/11/98	1030	Utah Dept of Commerce	Licenses and Permits	Annual Fees	\$20.00
02/18/98	1031	Geotechnical Testing	Testing-Robena Pond #4 & #6	Testing of Material - Pond #4 & #6	\$4,823.30
03/05/98	1032	Combustion Resources	Testing-Significant Chemical Change	Robena Synthetic Fuel Testing	\$7,280.00
03/13/98	1035	Wm. Kelly Nash	Professional Fees: Legal Fees	Legal Fees (See Note 1)	\$1,000.00
03/16/98	1037	Geotechnical Testing	Testing-Robena Pond #4 & #6	Testing of Material - Pond #4 & #6	\$6,305.75
03/16/98	1039	Standard Laboratories, Inc.	Testing-Robena Pond #4 & #6	Testing of Material - Pond #4 & #6	\$3,368.20
03/16/98	1040	Walter N. Heine & Assocs.	Licenses and Permits	Environmental Permit - Robena	\$7,737.36
03/16/98	1041	Commercial Testing & Engineering	Testing-Robena Pond #4 & #6	Testing of Material - Pond #4 & #6	\$4,320.00
03/16/98	1042	YT3N, LLC	Rent	Rent - 3/98	\$250.00
03/19/98		Key Bank Checks	Office Supplies		\$19.96
03/30/98		Key Bank	Bank Service Charges	Service Charge	\$67.00
04/05/98	1046	YT3N, LLC	Rent	Rent - 4/98	\$250.00
04/10/98	1045	Commercial Testing & Engineering	Testing-Robena Pond #4 & #6	Testing of Material - Pond #4 & #6	\$2,330.00
04/15/98	1048	Wm. Kelly Nash	Professional Fees: Legal Fees	Legal Fees (See Note 1)	\$1,000.00
04/30/98		Key Bank	Bank Service Charges	Service Charge	\$54.50
05/15/98	1050	Wm. Kelly Nash	Professional Fees: Legal Fees	Legal Fees (See Note 1)	\$1,000.00
05/28/98	1251	US West	Telephone		\$79.22
05/28/98	1252	Kenko Com	Telephone		\$30.28
05/28/98	1253	YT3N, LLC	Rent	Rent - 5/98	\$250.00
06/15/98	1054	Williams & Assoc	Professional Fees: Accounting	97 Tax Preparation	\$450.00
06/15/98	1055	YT3N, LLC	Rent	Rent - 6/98	\$250.00
06/15/98	1056	Wm. Kelly Nash	Professional Fees: Legal Fees	Legal Fees (See Note 1)	\$1,000.00
06/22/98	1053	Midvale City Corporation	Licenses and Permits	Business License	\$150.00
06/24/98		Key Bank	Bank Service Charges	Service Charge	\$60.00

CoBon Energy, LLC Expense Summary (01/01/97 - 12/31/01)

DATE	NUMBER	PAYEE	ACCOUNT	MEMO	PAYMENT
04/14/00	2061	US West	Telephone		\$166.54
04/19/00	2062	Midvale City Corporation	Licensing Fees		\$131.25
04/20/00	2063	Lois Nash	Professional Fees - Accounting		\$100.00
08/31/00	2064	US West	Telephone		\$209.80
09/25/00	2059	Williams & Assoc	Professional Fees: Accounting		\$400.00
10/09/00	2065	State of Utah	Licenses and Permits	Annual Fees	\$10.00
11/22/00	2066	US West	Telephone		\$82.59
11/22/00	2067	UPS	Postage and Delivery		\$14.50
11/22/00	2068	Midvale City Corporation	Licensing Fees		\$75.00
12/29/00	2069	State of Utah	Licenses and Permits	Annual Fees	\$10.00
12/29/00	2070	Qwest	Telephone		\$86.04
01/31/01		Key Bank	Bank Service Charges	Service Charge	\$69.06
03/14/01	2074	Williams & Assoc	Professional Fees: Accounting		\$160.00
05/14/01	2076	Qwest	Telephone		\$168.26
08/23/01	2077	Qwest	Telephone		\$170.44
08/24/01	2078	ICPE	Professional Fees: Management Services	Management Services: 01/01/01 - 06/30/01 (See Note 2)	\$26,460.00
08/24/01	2079	Hill Johnson & Schmutz	Professional Fees: Legal Fees	Legal Services: 01/01/01 - 06/30/01 (See Note 1)	\$21,830.00
11/29/01	2080	Qwest	Telephone		\$129.39
11/29/01	2081	UPS	Postage and Delivery		\$12.40
11/29/01	2082	State of Utah	Licenses and Permits	Annual Fees	\$10.00
11/29/01	2083	AGTC, Inc.	Subcontracts - Consulting	Consulting Advance	\$20,000.00
11/29/01	2084	Alpine Coal Co., Inc.	Subcontracts - Consulting	Consulting Advance	\$20,000.00
12/31/01	2085	Qwest	Telephone		\$42.22
12/31/01	2086	Midvale City Corporation	Licenses and Permits		\$75.00
12/31/01	2087	ICPE	Professional Fees: Management Services	Management Services: 07/01/01 - 12/31/01 (See Note 2)	\$26,020.00
12/31/01	2088	YT3N, LLC	Rent	Rent - 2000, 2001 (less \$20 credit)	\$5,980.00
12/31/01	2089	Hill Johnson & Schmutz	Professional Fees: Legal Fees	Legal Services: 07/01/01 - 12/31/01 (See Note 1)	\$19,435.00
12/31/01	2092	Alpine Coal Co., Inc.	Subcontracts - Consulting	Consulting Advance	\$115,000.00
12/31/01	2094	AGTC, Inc.	Subcontracts - Consulting	Consulting Advance	\$125,000.00
12/31/01	2095	AGTC, Inc.	Subcontracts - Consulting	Consulting Advance	\$64,000.00
12/31/01	2096	Alpine Coal Co., Inc.	Subcontracts - Consulting	Consulting Advance	\$64,000.00
SUBTOTAL					\$800,691.95
Synfuel #1, L.L.C.					
DATE	NUMBER	PAYEE	ACCOUNT	MEMO	PAYMENT
02/16/00		Key Bank	Printing and Reproduction	Office Supplies	\$94.70
03/31/00		Key Bank	Bank Service Charges	Service Charge	\$25.67
08/04/00	103	YT3N, LLC	Rent	Rent - (#1: 1997 - 2001) (#3: 2000)	\$18,000.00
08/08/00	104	ICPE	Professional Fees: Management Services	Management Fees - 1999 (See Note 2)	\$20,000.00
08/31/00		Key Bank	Bank Service Charges	Service Charge	\$4.87
11/16/00	105	ICPE	Professional Fees: Management Services	Management Fees - 1997, 2000 (See Note 2)	\$100,000.00
12/29/00	106	State of Utah	Licenses and Permits		\$10.00
03/31/01		Key Bank	Bank Services Charges	Service Charge	\$222.44
08/30/01	111	Alpine Coal Company, Inc.	Subcontracts - Consulting	Consulting Advance	\$10,000.00

Tab Z



CoBon Energy, L.L.C.

*1145 East South Union Avenue
Midvale, Utah 84047
Telephone: (801) 255-6666
Fax: (801) 566-0088*

November 10, 2002

Mr. Mark Rodak
Alpine Coal Company, Inc.
3920 Market Street
Camp Hill, PA 17011

Sent Via Fax

Dear Mark:

I received your letter Friday shortly after returning from lunch. Once again, I must respond that CoBon disagrees with your characterizations of our relationship. More to the point, however, I was very surprised at your decision to proceed with litigation counsel in this matter. I had understood we were meeting informally to engage in candid settlement discussions in furtherance of our preliminary accounting/settlement discussions in July. To this end, I understood litigation counsel were not necessary. As you well know, Kelly is and has been a business partner with CoBon Energy, LLC ("CoBon") throughout the history of this matter. He has not been retained as litigation counsel and will not be as he has been a direct participant in many of CoBon's dealings with AGTC, Inc. and Alpine Coal Company, Inc. ("A&A") as they relate to the initial Consulting Agreement and our subsequent relationship. He frankly knows a lot concerning the history of our projects and I believe may be a key to resolving the matter. You have known of his intended participation in this meeting for weeks.

In any event, you apparently have decided to take a different approach. Your persistence in resorting to unwarranted threats, your lack of justification for your demands, your inclusion of litigation counsel and the position outlined in your last letter have caused CoBon to reconsider the approach it will take. We have a significantly different understanding of CoBon and A&A's relationship, and the value of your respective contributions to CoBon's projects. In fact, our views of the relationship and Rick and/or your entitlements to consulting fees respecting the projects, or any of the projects, are so different that CoBon has concluded that judicial intervention is appropriate and, frankly, unavoidable. Despite CoBon's hope to avoid resorting to the courts (i.e., we have now scheduled and rescheduled expensive and time consuming trips for Kelly and I to meet with you), your position has caused us to conclude

that a clarification of the core relationship is a necessary first step to a fair resolution of the matter.

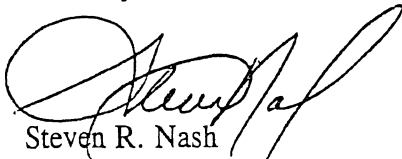
For this reason, CoBon caused a complaint seeking declaratory relief respecting the initial Consulting Agreement to be filed in Utah Third Judicial District Court late Friday afternoon. I have enclosed a courtesy copy of the Complaint for each of you. Please advise if your lawyer can accept service of process. Please understand that in proceeding with the filing of this declaratory judgment action, we were advised Friday afternoon that this will be the most cost effective and time efficient means of settling this matter. As your counsel will no doubt explain to you after reviewing the Complaint, CoBon fundamentally disagrees with many of your assumptions and characterizations of A&A's consulting arrangement with CoBon, and in particular, CoBon does not view the initial Consulting Agreement to be enforceable.

Kelly and I remain willing to fly to Baltimore Tuesday to meet with you and Rick as planned, if you feel we can have a productive meeting in light of this information. As indicated in my last correspondence, I have continued to work on CoBon's draft accounting and have attempted to reconcile and account for CoBon's stated concerns regarding aspects of your respective performance relating to the three projects, including a determination of the fair value of the services you actually provided. Obviously, during our July meeting, we initiated the first step in the accounting/settlement process by attempting to determine the revenues and expenses applicable to the projects and relating to the 1.5 million ton License Agreement. Step two necessarily requires an evaluation of what portion of any net income fairly compensates each of you for your actual services. As you know, we have not finalized step one, much less step two. Though prepared to discuss the same with you in some detail this week, we understand you may wish to have us reschedule so that litigation counsel can get involved on both sides.

Finally, while I will respond hereafter perhaps more specifically to your assertion that you are still missing documentation previously requested, I believe you have already received most, if not all, of the information requested regarding CoBon's revenues and expenses relating to A&A.

Thank you for your attention to this matter.

Sincerely,



Steven R. Nash
Manager

cc: Richard G. Visovsky
Wm. Kelly Nash

Evan A. Schmutz (3860)
Curtis R. Hussey (5488)
HILL, JOHNSON & SCHMUTZ, L.C.
Attorneys for Plaintiff
3319 North University Ave., #200
Provo, Utah 84604
Telephone: (801) 375-6600
Facsimile: (801) 375-3865

FILED DISTRICT COURT
Third Judicial District
NOV - 8 2002
SALT LAKE COUNTY
By _____ Deputy Clerk

FILED DISTRICT COURT
Third Judicial District
NOV - 8 2002

SALT LAKE COUNTY

IN THE THIRD JUDICIAL DISTRICT COURT

Deputy Clerk

IN AND FOR COUNTY OF SALT LAKE, STATE OF UTAH

COBON ENERGY, LLC,
a Utah limited liability company,

Plaintiff

vs.

AGTC, INC., a foreign corporation, ALPINE
COAL CO., INC., a foreign corporation, and
RICHARD G VISOVSKY, individually, and
dba AGTC,

Defendants.

COMPLAINT

Civil No.: 020912528

Judge: Frederick

Plaintiff CoBon Energy, LLC ("Plaintiff"), by and through its counsel, complains of the
Defendants and, upon information and belief, alleges as follows:

1. Plaintiff is a Utah limited liability company duly organized under Utah law and
with its principle place of business in Salt Lake County, State of Utah.
2. Defendant AGTC, Inc. is a foreign corporation with its principle place of business
in the State of New Jersey, which at material times, did business in Salt Lake County, State of
Utah, though not registered to do so. Alternatively, Defendant Richard G. Visovsky is an

individual residing in the State of New Jersey, who at material times, did business as AGTC in Salt Lake County, State of Utah, though not registered to do so. These Defendants are collectively referred to herein as "AGTC."

3. Defendant Alpine Coal Co., Inc. ("Alpine") is a foreign corporation with its principle place of business in State of Pennsylvania, which at material times, did business in Salt Lake County, State of Utah, though no registered to do so. Defendants are collectively referred to herein as "Defendants."

4. As the action is one for declaratory relief, no amount in controversy is at issue.

5. The contract forming the subject matter of this lawsuit was entered and performed in Salt Lake County, State of Utah, and therefore, venue of this matter is proper in Salt Lake County.

Background Facts

6. Effective November 1, 1996, Plaintiff and Defendants AGTC and Alpine (collectively, "A & A") entered into a Consulting Agreement.

7. Pursuant to the terms of the Consulting Agreement, A & A agreed to provide specified consulting and project development services relating to certain of Plaintiff's rights in and to a certain Coal Technology licensed to Plaintiff pursuant to a September 10, 1996 License Agreement between Plaintiff and Covol Technologies, Inc. ("Covol").

8. In consideration for such services, Plaintiff agreed to pay A & A a consulting fee equal to thirty percent (30%) of the cash proceeds and other consideration received by CoBon for "tax credits generated" by virtue of CoBon's sublicensure of the Coal Technology.

9. After execution of the Consulting Agreement, the parties determined, *inter alia*, that tax laws and other circumstances made it impossible to generate cash proceeds or other considerations from the sale of tax credits withing the meaning of the terms of the Consulting Agreement.

10. No material tax credits were obtained by CoBon as a result of its efforts to sublicense the Coal Technology with the assistance of A & A.

CLAIM FOR RELIEF
(Declaratory Relief Re: Contractual Rights)

11. Plaintiff incorporates by reference the preceding paragraphs.

12. A & A has made demand for payment of a consulting fee under the Consulting Agreement.

13. Plaintiff seeks a declaration by the Court of the parties' rights under the Consulting Agreement pursuant to Utah R. Civ. P. 57 and Utah Code Ann. §§ 78-33-1 to 13 (1953, as amended), as follows:

(a) that the Consulting Agreement was not performed, could not be performed and failed in its essential purpose inasmuch as no material tax credits could be or were generated;

(b) that the Consulting Agreement is unenforceable and void inasmuch as no cash or other proceeds would be generated from the sale of tax credits and given the impossibility of performance thereunder; and

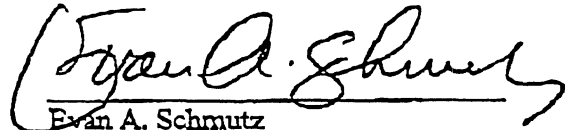
(c) that A & A is not entitled to any consulting fee under the Consulting Agreement as a result.

WHEREFORE, Plaintiff prays for the following relief:

- a. for declaration of Plaintiff's rights under the Consulting Agreement as specified;
- b. for an award of court costs and attorneys' fees herein; and
- c. for such other and further relief as the Court may deem appropriate.

DATED and SIGNED this 8th day of November, 2002.

HILL, JOHNSON & SCHMUTZ, L.C.



Evan A. Schmutz
Curtis R. Hussey
Attorneys for Plaintiff

Plaintiff's Address:

CoBon Energy LLC
1145 E. South Union Ave.
Midvale, UT 84047

Defendants' Addresses:

AGTC, Inc.
c/o Mr. Richard G. Visovsky, Registered Agent/President
7 Oakwood Way
Princeton, NJ 08550

Alpine Coal Co., Inc.
c/o Mr. Mark J. Rodak, Registered Agent/ President
3920 Market Street
Camp Hill, PA 17011

Alternate Address
Alpine Coal Co., Inc.
c/o Mr. Mark J. Rodak, Registered Agent/ President
25 North 19th Street
Camp Hill, PA 17011

Mr. Richard G. Visovsky, Individually and dba AGTC
7 Oakwood Way
Princeton, NJ 08550

Confirmation Report - Memory Send

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CoBon Energy, L.L.C.
1145 EAST SOUTH UNION AVENUE
MIDVALE, UTAH 84047
Telephone: (801) 255-1111
Facsimile: (801) 566-0088

DATE: November 11, 2002

TO:
Alpine Coal
Mark Rodak
FAX:
717-730-9416

FROM:
Steve Nash
FAX:

COMMENTS

Tab AA

BERMAN & SAVAGE, P.C.
E. Scott Savage (2865)
Stephen R. Waldron (6810)
Kyle C. Thompson (11242)
170 South Main Street, Suite 500
Salt Lake City, Utah 84101
Telephone: (801) 328-2200
Facsimile: (801) 531-9926
*Attorneys for AGTC, Inc. and
Alpine Coal Co., Inc.*

FILED
Fourth Judicial District Court
of Utah County, State of Utah
11/7/08 Deputy *MR*

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR COUNTY OF UTAH, STATE OF UTAH

COBON ENERGY, LLC,

Plaintiff,

vs.

AGTC, INC., ALPINE COAL CO., INC., and
RICHARD G. VISOVSKY,

Defendants.

AGTC, INC. and ALPINE COAL CO., INC.,

Counterclaimants,

vs.

COBON ENERGY, LLC,

Counterdefendant.

**AFFIDAVIT OF
MARK J. RODAK REGARDING
MOTIONS FOR SUMMARY
JUDGMENT**

FILED UNDER SEAL

Civil No. 060402937

Judge James R. Taylor

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STATE OF PENNSYLVANIA)
 : ss.
COUNTY OF CUMBERLAND)

I, Mark J. Rodak, declare and state:

1. I am the President of Alpine Coal Company, Inc. (“Alpine”), located in Camp Hill, Pennsylvania, a defendant and counterclaimant in this case. I make this Affidavit in support of: (a) Alpine/AGTC’s Motion for Summary Judgment as to the Complaint and for Partial Summary Judgment as to the Counterclaim; and (b) Alpine/AGTC’s Memorandum in Opposition to CoBon’s Motion for Partial Summary Judgment Re: Release. These motions raise the issue of plaintiff/counterdefendant CoBon Energy, LLC’s (“CoBon”) liability to pay Alpine and its joint venture partner, AGTC, Inc. (“AGTC”), under a “Consulting Agreement” that Alpine and AGTC entered into with CoBon, which was dated effective November 1, 1996. A true and correct copy of the Consulting Agreement is attached as Exhibit 91 to the Alpine/AGTC’s Appendix of Exhibits Regarding Motions for Summary Judgment and Partial Summary Judgment (the “Appendix”), which is being filed with this Affidavit. All references to “Exhibits” in this Affidavit are to exhibits contained in the Appendix. This Affidavit is based upon my personal knowledge, except where noted, and, if called as a witness, I could and would competently testify thereto.

2. I refer to AGTC and Alpine together as “Alpine/AGTC” in this Affidavit. I use “CoBon” to include the limited liability project companies in which it was a member or in which its members were a member.

3. An Affidavit by Mr. Visovsky is being filed along with this Affidavit, which I refer to in this Affidavit. I have read Mr. Visovsky’s Affidavit, and concur with all understanding,

considerations, knowledge, and actions attributed to me in Mr. Visovsky's Affidavit, based upon my review of the documents produced in this action and/or my personal knowledge. Terms used in this Affidavit that are defined in Mr. Visovsky's Affidavit have the same meaning as in Mr. Visovsky's Affidavit. I am familiar with both Alpine's and AGTC's files regarding the Consulting Agreement that have been produced in this action.

4. Alpine was incorporated in 1989 originally to mine coal. It changed its business to coal trading and coal industry consulting. As regards all of Alpine's dealings with CoBon, I was the sole representative of Alpine and Alpine acted only through and by me. Richard Visovsky is the principal of AGTC. I have been acquainted with Mr. Visovsky since we both attended Pennsylvania State University, where I graduated in 1980 with a B.S. in Mining Engineering. By 1996, I had 18 years experience in the coal industry and had performed consulting services to numerous governmental agencies, as well as over 150 private coal mining clients.

A. Section 29 And The Covel Patented Process

5. The Consulting Agreement concerned the development of facilities to manufacture "synthetic" fuels ("synfuel") as to which tax credits were available under Section 29 of the Internal Revenue Code, later Section 45K ("Section 29"), known as "synfuel facilities."

6. In 1980, Congress passed what became Section 29 to promote the development and use of domestic fuels from non-conventional sources in order to reduce United States dependency on foreign oil. Section 29 provided a tax credit to encourage the production of oil, gas and synthetic fuels from non-conventional sources such as shale, tar sands, and waste coal. Exhibit 1003 is a true and correct copy of Section 29 and its adoption and amendment history from the United States Code

Annotated. Exhibit 1004 is a true and correct copy of an article entitled "Section 29 Tax Credits from Synthetic Fuel from Coal," by Daniel L. Kesten that Mr. Kesten provided to me. Exhibit 149 is a true and correct copy of a March 14, 1997 CoBon letter that described Section 29 tax credits.

7. Section 29, by its terms, provided a credit for "qualified fuels produced and sold by the taxpayer to an unrelated person during the taxable year, and the production of which is attributable to the taxpayer." Pursuant to Internal Revenue Service ("IRS") application of Section 29, a "qualified" fuel, known as "synfuel," was a fuel that differed significantly in chemical composition, not simply physical composition, from the "alternative substance" used to produce the fuel.

8. Section 29 tax credits were generated or made available by producing and selling synfuel at qualified facilities ("synfuel facilities") to third-parties who were not related to the owner or owners of the synfuel facility. At the time the Consulting Agreement was entered into, a qualified facility, a synfuel facility, was a facility that produced synfuel and which was placed in service prior to July 1, 1998, pursuant to a contract to build the facility that was entered into prior to January 1, 1997. Section 29 tax credits were available only for synfuel sales made before January 1, 2008, because December 31, 2007 was the sunset date for Section 29. Section 29 tax credits were available only to taxpayers who were true owners of a qualified synfuel facility, as determined by the IRS. As ultimately determined by the IRS, a taxpayer who had purchased a synfuel facility from a developer such as CoBon qualified to claim Section 29 tax credits only if the taxpayer was sufficiently at risk under the transaction by which it purchased the facility by making a sufficiently large enough, non-contingent, initial investment.

9. A taxpayer could confirm the availability of Section 29 tax credits by obtaining a private letter ruling from the IRS ("PLR"). A favorable PLR would rule that, under the facts presented by the taxpayer in requesting the PLR, the fuel being produced and sold at the facility was a "qualified fuel" under Section 29 (synfuel), that the sales were to an unrelated third-party, that the facility was a qualified facility under Section 29 (a synfuel facility), and that the taxpayer qualified as the owner of the synfuel facility. Exhibit 386 is a true and correct copy of a March 25, 1998 request for a private letter ruling by the Internal Revenue Service regarding the availability of Section 29 tax credits for what I refer to as the "Consol Project". Exhibit 533 is a true and correct copy of a private letter ruling relating to the Consol Project.

10. The amount of the tax credit that were available or could be claimed was primarily a function of the heat content (expressed in Btu's) of the synfuel being produced and sold. Approximately \$25 per ton of Section 29 tax credits were available for sales of synfuel with a heat content of 12,500 Btu per pound. As a result, a 1 million ton per year synfuel facility producing 12,500 Btu synfuel was able to generate \$25 million of Section 29 tax credits for its owner each year. Because Section 29 provided a tax credit, rather than a deduction, a \$25 tax credit was the equivalent of \$25 in cash for a synfuel project owner with sufficient revenue.

11. Coal could be used to produce synfuel under Section 29. During the time coal derived synfuel facilities were being developed prior to July 1998, it was generally understood that Section 29 required the use of mostly what originally were waste coal fines to produce synfuel. After coal is mined, it is sized and washed to meet customer specifications. A by-product of this sizing and washing operation is coal fines, which are small coal particles (less than 1/4 inch in diameter to dust

size). Waste coal fines were unmarketable coal fines that are stored in either piles or slurry ponds, which are found at most if not all coal mining and processing sites. Although widely prevalent, waste coal fines are unmarketable due to their low Btu value (as a result of their small size and situation in ponds or with non-coal material) and the high cost of handling and using the fines.

12. I am aware of numerous technologies that agglomerated, or bound together, coal fines to create an agglomerated or bounded coal product. Although coal agglomeration technologies almost always were uneconomical without Section 29, such technologies that produced what qualified as a synfuel under Section 29 were economical. If a coal fine agglomeration process resulted in a significant chemical change to the coal fines, then the resulting coal product qualified as a synfuel under Section 29, which meant Section 29 tax credits were available from the production and sale of the resulting fuel. As a result of the availability of Section 29 tax credits, synfuel produced by using coal fines was more profitable than raw coal.

13. Covol Technologies, Inc., now known as Headwaters Incorporated ("Covol"), was one of several companies that in the early 1990's developed processes for producing agglomerated coal from coal fines. The Covol patented technology was basically a three step process that: (a) treated the coal fines with acid to prepare the fines; (b) added a proprietary polymer based binder agent to the fines that originally was intended to bind the fines; and (s) pressurized and sized the treated fines to create a briquette sized coal product, through either a briquetter, pelletizer or extruder machine. Key for purposes of Section 29 was that the Covol patented process resulted in a significant chemical change to the coal used as raw material feedstock, such that the resulting fuel product could qualify as a synfuel. This meant that the Covol patented process was a "synfuel

technology,” which was a technology that could be used to produce what qualified as synfuel under Section 29. I learned from CoBon that Covol had obtained a PLR from the IRS in September 2005 confirming that the Covol synfuel technology produced what qualified as a synfuel under Section 29. The March 25, 1998 request for PLR submitted to the IRS for what I refer to as the “Consol Project” (Exhibit 386) described the Covol synfuel technology.

B. First Contacts With CoBon

14. I first learned of Covol, the Covol synfuel technology and of CoBon in October 1995, when I was contacted by Steve Nash regarding my interest in assisting in the development of synfuel facilities that would utilize the Covol synfuel technology. I then put Mr. Nash in contact with Mr. Visovsky of AGTC. When Mr. Visovsky and I first learned of the Covol synfuel technology in October 1995, and further in November 1995, we learned that Covol was looking to commercially exploit that process by developing synfuel facilities that would use waste coal fines as raw material feedstock, due to the fact that the IRS had confirmed that the Covol synfuel technology could be used to produce synfuel. It was my understanding that Alpine/AGTC had the eastern United States coal industry experience and contacts that CoBon and Covol lacked to be able to pursue development of synfuel facilities in the eastern United States.

15. Exhibit 4 is a true and correct copy of an August 17, 1995 “Articles of Organization of CoBon Energy, LLC,” produced by CoBon in the action, which states CoBon had been formed on August 17, 1995 and, at the time Steve Nash first contacted me, was an affiliate of Covol, as CoBon’s original members and members at that time were Intermountain Consumer Professional Engineers, Inc. (“ICPE”) and Covol. I came to learn from CoBon that ICPE had a history of

providing engineering services to Covol, including the design of Covol's original pilot synfuel facility located in Price, Utah.

16. Exhibit 14 is a true and correct copy of a January 1, 1996 "Articles of Amendment to the Articles of Organization of CoBon Energy, LLC, registered September 12, 1995," produced by CoBon in this action. Exhibit 15, is a true and correct copy of a January 18, 1996 "Consent to Admission of Member" and a "Notice of Resignation," both produced by CoBon in this action. Exhibit 16 is a true and correct copy of a January 18, 1996 "Operating Agreement for CoBon Energy, LLC," produced by CoBon in this action. These documents state that, on January 16, 1996, Covol and ICPE resigned as members of CoBon, and were replaced by Steve and Robert Nash. Steve and Robert Nash, two brothers, were engineers with ICPE.

17. Exhibit 425 is a true and correct copy of an April 28, 1998 letter from Orrick, Herrington & Sutcliffe to the IRS, produced by CoBon in this action, which I understand was supplied to the IRS to support the request for a PLR relating to the Consol Project. This document states that Steve and Robert Nash owned CoBon 50-50, Steve Nash owned 49% of ICPE, and CoBon "is a development company that is in the business of developing synthetic fuel projects. CoBon Energy also owns, markets and licenses technology used in synfuel projects." Steve Nash was the manager of CoBon at all relevant times, and is the person with whom Mr. Visovsky and I communicated with the most in our dealings with CoBon. We also had communications with Robert Nash, but to a much less extent than we communicated with Steve Nash. We also communicated with CoBon extensively through Sean Reddington, who was an in-house consultant of ICPE who performed work for CoBon.

18. Mr. Visovsky and I learned from Steve Nash that, in January 1996, CoBon entered into a contract with Covol giving CoBon the right to participate in several synfuel facilities that Covol was hoping to develop, and requiring CoBon to assist Covol in Covol's efforts to develop synfuel facilities. Exhibit 17 is a true and correct copy of what I understood to be the January 30, 1996 letter agreement between CoBon and Covol in that regard.

19. Mr. Nash's original contact with me and Mr. Visovsky led to Alpine, AGTC, and a third joint venturer, E.J. Hodder and Associates, Inc., entering into an agreement with Covol, dated March 6, 1996, under which the joint venturers were to provide services to Covol in connection with the identification and selection of synfuel project sites, coal fine sources, and potential end users in order to assist in Covol's development of synfuel facilities.

C. Developing Synfuel Facilities

20. I use the term "synfuel project" here to refer to an undertaking to develop a synfuel facility, which is how we used that phrase during the relevant time. The basic steps to developing a synfuel facility were: (a) putting the synfuel project in place; (b) permitting the synfuel project; (c) getting the synfuel facility constructed; (d) marketing the synfuel facility to investors to obtain construction financing and to sell the facility; and (e) authorizing the investor that actually invested and purchased the facility, the "investor/owner," to use the applicable synfuel technology, which in our situation was the Covol synfuel technology.

21. A synfuel project was put in place – that is, was brought into existence – by obtaining contracts or firm commitments securing the three essential components of a synfuel project:

a. The first essential component was a suitable project site. The factors

determining whether a site was suitable were driven by the need to make a synfuel facility marketable for investment, and included the site's size (whether it was large enough to construct and operate a synfuel facility), the site's access to a suitable feedstock source and to a means of transporting synfuel to a buyer, and duration for which the site was available.

b. The second essential component was a supply of suitable feedstock to be used to manufacture the synfuel. Factors determining whether feedstock was suitable were driven both by Section 29 requirements and the need to make a synfuel facility marketable for investment. During the time synfuel projects were being put in place, in 1996 and through July 1, 1998, it was understood that Section 29 required that feedstock had to be, in original form, mostly waste coal fines in order that the resulting product could qualify as synfuel. As discussed below, after synfuel facilities were developed, sometime in 1999 it became known that suitable feedstock for purposes of Section 29 could be entirely marketable coal. Otherwise, the factors determining suitability of feedstock were investor driven. At all times, higher Btu value feedstock was more optimal than lower Btu value feedstock. This was because higher value Btu synfuel was worth more Section 29 tax credits per ton than lower Btu value synfuel, and the Btu value of the feedstock was the major factor in determining the Btu value of the synfuel (the other factors determining the Btu value of the synfuel included the binder agent's effect on the Btu value and whether the synfuel could or would be dried in a commercial dryer as part of the production process in order to reduce moisture and thus raise the Btu value of the synfuel). This meant we would target sites where there were higher Btu value waste coal fines or where lower Btu value waste coal fines could be blended with

available higher Btu value coal material. We also targeted sites where there was an existing waste coal fines processing or “wash” facility, or where a synfuel project could be pursued along with a project to build a waste coal fines wash facility, with the feedstock for the synfuel facility to come from the wash facility. The wash facility would be used to increase the Btu value of what were originally waste coal fines. In 1996 and through 1998, it was understood that washed coal fines could be used to produce synfuel, as long as the majority of the feedstock had originated as waste coal fines. In order to be able to attract investors in a project, a sufficient amount of suitable feedstock had to be tied up, optimally an amount that would allow the synfuel facility to be operated at the site for the entire length of the Section 29 tax credit program.

c. The third essential component of a synfuel project was a buyer for the synfuel. Section 29 required that the synfuel buyer be unrelated to the taxpayer who owned the synfuel facility and was claiming the tax credits. The buyer did not have to be the end user of the synfuel, but could be a coal supplier (such as a coal company). Otherwise, whether a synfuel buyer was suitable was up to the particular investor/owner for a project. These factors included the length of the buyer’s purchase commitment, and the creditworthiness of the buyer.

d. The deciding tests as to whether a site, a feedstock source, and a synfuel buyer for a project were suitable was whether a tax-oriented investor would invest in the project and whether the synfuel facility qualified for Section 29 tax credit treatment. If so, the essential components of the project were suitable.

22. Contracts for these three essential components, a lease for the site, a purchase contract for feedstock, and a sale contract for synfuel, were referred to as the “project contracts.” Our efforts to put a synfuel project in place usually were directed at coal companies, which were called “project hosts,” that owned suitable sites and feedstock sources and which could purchase synfuel to supply to their existing customers. Exhibit 308 is a true and correct copy of a December 2, 1997 letter from CoBon to LaSalle Partners, produced by CoBon in this action, which addressed what I refer to as the “Nemacolin Project” and the development step of putting a project in place.

23. Once a project was in place, the necessary permits had to be obtained if the project was otherwise proceeding. Part of the effort was determining what permits were required.

24. Once a project was in place, the goal became to get the subject synfuel facility constructed and placed in service (regularly operating) on time, before July 1, 1998, so it could qualify for Section 29 tax credit treatment. The facility had to be constructed under a construction contract that had been entered into prior to January 1, 1996. CoBon did not have the intent or the funds to participate in any synfuel project where it would pay for the construction of the synfuel facility. So, if CoBon was participating in a synfuel project in which it was responsible for getting the synfuel facility constructed, CoBon had to obtain financing, typically from investors. Exhibit 170 is a true and correct copy of an April 18, 1997 CoBon letter to Covol, produced by CoBon in this action, that identified CoBon’s plans to obtain financing in connection with sales of synfuel facilities. Exhibit 92 is a true and correct copy of letter of intent agreement between CoBon and PBS Coals, Inc., written by CoBon on December 5, 1996, regarding development of a synfuel facility that described, on page 4 under “Preliminary Project Economics,” CoBon’s intent to obtain financing in

connection with the sale of the synfuel facility.

25. CoBon was looking to participate in synfuel projects that would be marketed and sold to tax-oriented investors who could use the significant and valuable Section 29 tax credits. Marketing also would involve trying to obtain construction financing to be provided by an investor. These understandings are why the Consulting Agreement referred to marketing synfuel facilities to third parties. We understood that tax-oriented investors were companies with large enough taxable incomes so that they could use the tax credits. CoBon's December 5, 1996 letter (Exhibit 92), March 14, 1997 letter (Exhibit 149) and April 18, 1997 letter (Exhibit 170) described its intent to market synfuel projects. Investors would invest or participate in the project by providing necessary financing and by purchasing the project so as to obtain the ability to claim the Section 29 tax credits by purchasing the synfuel facility, that is, becoming an "investor/owner" as that term is used here.

26. In order for Section 29 tax credits to be available, an investor/owner had to use at its synfuel facility a synfuel technology, meaning a technology whereby the material feedstock underwent a significant chemical change. This meant the investor/owner had to be authorized or licensed to use a synfuel technology, as part of the development of a project, in order to be able to claim Section 29 tax credits.

27. Developers such as Covol and CoBon, and investors/owners, participated in synfuel projects by using limited liability project companies in which they were the sole or one of several members. Each synfuel project would have its own dedicated project company, which, in turn, might be owned by another project company owned and controlled by the project participant. The developer(s) would use the project company hold the assets of the project, which were the project

contracts and permits and a facility's hard assets, and then would sell the project to the tax-oriented investor by selling the membership in the project company. For example, CoBon used "CoBon Synfuel #2, LLC" and "Robena, LLC" as the project companies for the Consol Project. CoBon's members were the members of CoBon Synfuel #2, LLC, and CoBon Synfuel #2, LLC was the sole member of Robena, LLC. CoBon used Robena, LLC to enter into the project contracts and to obtain the construction financing for the Consol Project, and sold the Consol Project to an investor/owner by having CoBon Synfuel #2, LLC sell its membership in Robena, LLC to a limited partnership that was owned by the investor/owner. This structure is described in the March 25, 1998 request for a PLR for the Consol Project (Exhibit 386).

D. Transitions From Working For Covol To Working For CoBon; CoBon's Synfuel Projects

28. On July 19, 1996, Covol terminated its March 1996 agreement with Alpine/AGTC and E.J. Hodder & Associates pursuant to the terms of that agreement. At that time or soon after, Steve Nash informed Mr. Visovsky and me that Covol wanted to renegotiate its January 1996 development agreement with CoBon, and did not want to pursue the synfuel projects that we and CoBon were then working to put in place for Covol. Exhibits 20 and 21 are true and correct copies of two June 26, 1996 letters from CoBon to Covol, originally produced by Covol in unrelated litigation, that addressed Covol's plans and proposals at that time. Exhibit 21A is a true and correct copy of a July 11, 1996 letter from CoBon to Michael Svonavec, a copy of which was provided to Alpine/AGTC, that addressed Covol's and CoBon's plans at that time. Exhibit 23 is a true and correct copy of an August 2, 1996 letter from Covol to CoBon, produced by CoBon in this action,

that further addressed Covol's plans and proposals at that time.

29. In July 1996, Steve Nash of CoBon told me and Mr. Visovsky that CoBon wanted to continue to work with Alpine/AGTC with regard to the development of synfuel projects. Congress had recently amended Section 29 to extend the deadline for placing synfuel facilities in service from July 1, 1997 to July 1, 1998, so there was still time to develop synfuel facilities. However, Cobon would have to act quickly to get synfuel projects in place, both because there was a December 31, 1996 deadline for entering into binding construction contracts to build synfuel facilities and because financing would have to be obtained for synfuel facilities to be build and the prospect of financing was uncertain. Alpine/AGTC, because of Mr. Visovsky's and mine knowledge, contacts and experience in the coal industry, could help CoBon to quickly put synfuel projects in place. Without our services, CoBon itself had no coal industry knowledge, contacts or experience to quickly put synfuel projects in place. There were plenty of coal companies with plenty of coal fines reserves that CoBon could locate, but Mr. Visovsky and I could put CoBon into contact with the coal companies that would be willing to consider a synfuel project and had optimal coal fines reserves, introduce CoBon to senior management, and work with senior management so as to quickly put synfuel projects in place. Mr. Visovsky and I had close working relationships with management of numerous coal companies and potential development partners, and had contacts that could introduce us to senior management of coal companies and potential development partners. We also knew what companies would be willing to purchase synfuel.

30. In August 1996, Steve Nash informed Mr. Visovsky and me that CoBon had reached an agreement with Covol that allowed CoBon itself to pursue development of synfuel projects. I

assisted CoBon in compiling and drafting the list of synfuel projects and areas that was included in the August 1996 agreement as to which CoBon would have exclusive development rights, which included the projects Alpine/AGTC had introduced to CoBon and were then working on. Exhibit 28 is a true and correct copy of the August 20, 1996 letter agreement between CoBon and Covol, a copy of which was provided to Alpine/AGTC.

31. In September 1996, CoBon entered into a license agreement with Covol that provided CoBon the exclusive right develop and sell synfuel projects that would use the Covol synfuel technology as to the synfuel projects and areas identified in the August 20, 1996 agreement between CoBon and Covol. CoBon had supplied me with a draft of its proposed license agreement with Covol for my review and comments, and supplied me with the executed License Agreement between CoBon and Covol, dated September 10, 1996. Exhibit 36 is a true and correct copy of the September 10, 1996 License Agreement between Covol and CoBon. Consistent with how we used the terms at the relevant times, references to “supplying” or “providing” license or to “licensing” and “sublicensing” in this Affidavit are to any transaction by which either a synfuel facility owner was authorized to use the Covol synfuel technology to produce synfuel up to a particular capacity, or a business entity was authorized to develop synfuel facilities that would use the Covol synfuel technology up to a particular capacity.

32. After entering into its August 20, 1996 letter agreement with CoBon and through the July 1, 1998 deadline for placing synfuel facilities in service, CoBon pursued or considered pursuing at least the following synfuel projects, with Alpine/AGTC’s substantial assistance and support.

a. A project to develop one or more synfuel facilities at Consolidation Coal

Company ("Consol") sites, which in July 1997 became focused upon developing a synfuel facility at Consol's Robena plant site in Green County, Pennsylvania (the "Consol Project"). After July 1997, this Project sometimes was referred to as simply the "Robena Project";

b. A project to develop a synfuel facility at a PBS Coal Company ("PBS") site, which in 1997 became focused upon developing a synfuel facility at PBS' Shade Creek plant site in Somerset County, Pennsylvania (the "PBS Project"). This Project sometimes was referred to as the "PBS/Somerset" or "Somerset" Project;

c. A project to develop one or more synfuel facilities with a joint venture entity between CC Pace Capital ("Pace") and Carbon Resources of Florida, Inc. ("Carbon Resources") (combined "Pace Carbon Resources"), which by the end of 1996 and early 1997 ended being focused upon developing four synfuel facilities located in Virginia and West Virginia (the "Pace Project"). This Project sometimes was referred to in the plural, as the "Pace Projects," due to the fact that it involved four synfuel facilities;

d. A project to develop a synfuel facility at Edison Mission's co-generation plant site located in Grant Town, West Virginia (the "Grant Town Project");

e. A project to develop a synfuel facility at Bel Air Coal Sales' ("Bel Air") waste coal fines reserve site in Mather, Pennsylvania (the "Bel Air Project"). This Project sometimes was referred to as the "Mather Project";

f. A project to develop a synfuel facility at a Miller Mining site in Sugar Creek, Ohio (the "Miller Project");

g. A project to develop a synfuel facility at a Mon View Coal Company ("Mon

View”) waste coal fines reserve site in New Eagle, Pennsylvania, which in original form in late 1996 and early 1997 was to be developed by a joint venture between CoBon and another developer, Double Day, Inc. (“Double Day”) (possibly through Double Day’s affiliate Diversified Resources International, Ltd (“Diversified”) (the “original Mon View Project”). The CoBon/Double Day joint venture also was to pursue the Miller Project, such that the Miller and original Mon View Projects sometimes were referred to as the “Double Day” or “Diversified” Projects. In late 1997 and early 1998, there was another attempt to develop a a synfuel facility at the Mon View site, this time in connection with Creative Environmental Solutions, Inc’s (“Creative Environmental”) project to develop a coal fines wash facility at the site (the “subsequent Mon View Project”); and

h. A project to develop a synfuel facility at a LTV Steel’s waste coal fines reserve site at Nemacolin, Pennsylvania (the “Nemacolin Project”).

The September 10, 1996 License Agreement between CoBon and Covol (Exhibit 36), which incorporated their August 20, 1996 letter agreement (Exhibit 28), lists the synfuel projects that CoBon was pursuing or considering at that time, which includes the Consol, Grant Town, Miller, original Mon View and PBS Projects. CoBon updated this listing on October 15, 1996, which added the Pace Project (after Alpine/AGTC’s introduction of the Pace Project to CoBon in early October 1996). Exhibit 51 is a true and correct copy of CoBon’s October 15, 1996 letter to Covol by which it updated its listing, which CoBon sent to Alpine/AGTC on October 16, 1996. Alpine/AGTC were working with CoBon on the Consol, PBS, Pace, Grant Town, Bel Air, Miller and original Mon View Projects before the Consulting Agreement was entered into, in anticipation of entering into that

Agreement and under our August 28, 1996 oral agreement with CoBon to enter into the Consulting Agreement. In April 1997, CoBon wrote to Covol stating that it was still pursuing and looking for financing for the Miller, Mon View, PBS, Bel Air and Consol Projects. Exhibit 170 is a true and correct copy of an April 18, 1997 letter to Covol in that regard, which was copied to Mr. Visovsky. Alpine/AGTC had assisted CoBon in drafting that letter. Alpine/AGTC introduced the Nemaquin and subsequent Mon View Projects to CoBon in 1997. Exhibit 308 is a true and correct copy of a December 2, 1997 letter by CoBon, produced by CoBon in this action, regarding CoBon's potential interest in the Nemaquin Project. Exhibit 305 is a true and correct copy of a November 26, 1997 correspondence by Mr. Visovsky regarding CoBon's potential participation in the subsequent Mon View Project.

33. At the time the Consulting Agreement was entered into, Alpine/AGTC could make available to CoBon the opportunity to pursue synfuel projects due to business relationships that Mr. Visovsky and I had with the potential project hosts and development partners. These included: (a) the Consol Project, as Mr. Visovsky had a long-time business relationship with Ron Florjancic, a member of the senior management of Consol and had a history of purchasing coal from Consol, (b) the PBS Project, as I had developed a business relationship with Tim Phillips, the Vice President of Marketing of PBS and Mark Amyot, the Sales Manager of PBS based upon an introduction by Bill Clements, (c) the Pace Project, as Mr. Visovsky had worked under Fred Murrell, the President of Carbon Resources, and (d) the Bel Air Project, as I had developed a business relationship with the President of Bel Air, Tom Guidi, based upon an introduction by Stanley Sears. I had also developed a working relationship with Paul Multari of Edison Mission in trying to put in place the Grant Town

Project , based upon an introduction by Mr. Sears. I understand CoBon entered into the Consulting Agreement because Alpine/AGTC could make these, and other synfuel projects, available to CoBon.

E. The Parties Understandings When The Consulting Agreement Was Entered Into

34. Pursuant to its plan to participate in the development of synfuel facilities, CoBon retained AGTC and Alpine under the Consulting Agreement, which was executed by Alpine/AGTC on December 10 or 11, 1996, and made effective November 1, 1996. Alpine and AGTC were referred to as “A&A” in the Consulting Agreement. Alpine/AGTC had exchanged several drafts of the Consulting Agreement with CoBon between and including November 1 and December 5, 1996.

1. Anticipated Proceeds To CoBon As Developer

35. At the time the parties entered into the Consulting Agreement, it was understood between CoBon and Alpine/AGTC that there could be three types of proceeds paid by investors/owners of synfuel facilities to the parties who participated in developing and selling a synfuel facility, and CoBon anticipated receiving up to all three (depending upon whether it participated in the licensing and/or sale of a synfuel project): (a) proceeds for tax credits; (b) initial royalty fees; and (c) binder fees.

36. It was understood between CoBon and Alpine/AGTC that proceeds for tax credits (called “Proceeds” in the Consulting Agreement, and also called “tax credit payments” at the time by CoBon) would be the consideration for the tax credits that actually were made available to the investors/owners. Proceeds for tax credits would be proceeds that were based (that is, calculated) upon the actual generation of Section 29 tax credits. The concept was that the parties who participated in the development of synfuel facilities (depending upon their participation) would be

paid the equivalent of a percentage of each dollar of tax credit that was actually made available (e.g., 25% of each \$1.00 of tax credit) as compensation for having participated in making tax credits available to the investor/owner. The proceeds would be consideration for tax credits because they would be paid for tax credits if and when the credits were made available.

37. It was understood at the time the Consulting Agreement was entered into that, if the amount of a particular proceeds was calculated on any basis related to the actual generation of tax credits, it would be a proceeds for tax credits. This would include where the amount of the proceeds was calculated based upon: (a) the amount of synfuel actually produced or sold in a preceding quarter (e.g., \$2.50 per ton of synfuel produced in a preceding quarter), because the production and sale is what made tax credits available; (b) the Btu value of the synfuel that was produced or sold in a preceding quarter (e.g. \$0.025 per million Btu (MMBtu) of synfuel produced or sold in a preceding quarter), because the Btu value determined the amount of tax credits that were available; or (c) the dollar value of the Section 29 tax credits actually generated in a preceding quarter (e.g. \$0.25 times the amount of Section 29 tax credits generated in a preceding quarter).

38. It was understood between CoBon and Alpine/AGTC at the time the Consulting Agreement was entered into that investors/owners would pay proceeds for tax credits both: (a) as part of the purchase price for the synfuel facility, in the form of what were anticipated to be called "contingent payments"; and (b) as part of the price or license fee for use of the Covol synfuel technology, in the form of what were anticipated to be called "earned royalties." However, it was understood between CoBon and Alpine/AGTC that whether proceeds under a particular transaction were proceeds for tax credit would depend upon how the proceeds were calculated (tied to the actual

generation of Section 29 tax credits), rather than what the proceeds were called.

39. It was understood that whether a developer received either or both contingent payments or earned royalties depended upon whether it participated in the sale or licensing of the project, or in both. If a developer participated in the sale, it would receive a share or all of the contingent payments. If it participated in the licensing of the project, it would receive a share or all of the earned royalties. If it participated in both, it would receive a share or all of both contingent payments and earned royalties.

40. It was understood between CoBon and Alpine/AGTC at the time the Consulting Agreement was entered into that initial royalty fees would be the one-time, fixed fee part of the license fee, or price, that an investor/owner paid for use of the Covol synfuel technology. Initial royalty fees would be calculated based upon the licensed capacity of a project (e.g., if a project was given 500,000 tons of license, it would pay an initial license fee based upon the 500,000 tons (such as \$3.00 per ton or \$1.5 million)).

41. It was anticipated at the time the Consulting Agreement was entered into that the initial royalty fees would be called "license royalty fees" or "sublicense royalty fees," and would be set forth and had to be paid under the transaction by which the investor/owner was authorized to use the Covol synfuel technology. It was understood that the investor/owner would pay the initial royalty fee in addition to "earned royalties," which were the ongoing, contingent part (based upon the actual generation of Section 29 tax credits) of the license fee or price for the authorization.

42. It was understood between CoBon and Alpine/AGTC at the time the Consulting Agreement was entered into that binder fees would be the consideration paid by investors/owners

for the Covol's proprietary binder agent used in connection with the Covol synfuel technology. The binder agent would be sprayed on the coal used as feedstock to produce the significant chemical change needed for the fuel product to qualify as a synfuel.

43. Our understanding regarding the types of proceeds CoBon anticipated receiving for its participation in the development of synfuel facilities was based upon communications Mr. Visovsky and I had with CoBon and our experiences with Covol, and are reflected in our communications in 1996 regarding development of synfuel facilities. Exhibit 72 is one page of notes, produced by CoBon, that I understand are from a meeting Steve Nash had with Brent Cook of Covol in October 1996 discussing the types of consideration anticipated for developing a synfuel facility, including applying the concepts to an example of a 500,000 ton per year synfuel facility expected to generate \$12.5 million tax credits per year. The notes stated, in part:

Sale [sell] plant to TOI [tax oriented investor]

Receive

- License Pmts [payments]
- Contingent Pmts [payments]

TOI – Receives tax credits
– Deduction for pmts [payments]
– Depreciation on Investment

Example 500,000 tpy plant

Plant Construction Cost – \$6,000,000.00
Initial License Fee (2.00/ton) – \$1,000,000.00
Total Cost \$7,000,000

Tax Credits Generated 12,500 BTU (\$25.00/ton) – \$12,500,000.00/Year

TOI pays (80¢/\$1.00 for t.c. [tax credits]) to pay the

- License Royalty Fee
- Contingent Payment

Breakdown

Sale of license - License Roy. Fee (\$3.00/ton) = \$1,500,000

Sale of Plant - Cont. [Contingent] Fee = \$8,500,000.

Prior to entering into the Consulting Agreement, Mr. Nash explained the concepts set forth in these notes to me and Mr. Visovsky.

44. Exhibit 40 is a true and correct copy of a September 23, 1996 correspondence from Steve Nash of CoBon to me, which at the second page, addressed the concept of proceeds for tax credits and stated, "The investor will then pay between .65¢ to .85¢ [\$0.65 to \$0.85] per \$1.00 of tax credit realized to CoBon for distribution." Mr. Visovsky and I understood that the phrase "for distribution" referred to distribution to the Alpine/AGTC and the four persons who CoBon told us at our August 28, 1996 meeting with CoBon would participate in CoBon's proceeds from investors/owners (which is described in paragraph 8 in Mr. Visovsky's Affidavit). Exhibit 43 is a true and correct copy of an October 3, 1996 letter Mr. Visovsky sent to Fred Murrell that led to the Pace Project that addressed proceeds for tax credits and stated "CoBon's participation fee in the tax credits is proposed at 40% of their value payable on a quarterly basis after the product has been produced." Exhibit 60 is a true and correct copy of an October 18, 1996 discussion draft of a letter of intent from CoBon to Pace that refers to proceeds for tax credits as a "tax credit fee" at page 6. Exhibit 35 is a true and correct copy of a September 9, 1996 letter from CoBon to Olin Miller which, at page 2, that addressed proceeds for tax credits and stated, "The investor will pay CoBon a quarterly fee after the coal has been produced and sold thereby creating the tax credits, somewhere between 60 to 80 cents per dollar. For projection purposes we will use 70 cents per dollar. . . . The

investors will retain 100% of the tax credits and in exchange will pay 70 cents per dollar of the tax credit in cash.” Exhibit 54 is a true and correct copy of a joint venture proposal to CoBon regarding the Miller and original Mon View Projects that stated “80% of tax credits earned each year for 11 years will be paid to CoBon/Diversified J.V.” Exhibit 80 are true and correct copies of pro forma statements that CoBon sent to Alpine/AGTC on November 18, 1996 for the PBS Project, the Consol Project, the Grant Town Project and the Miller and original Mon View Projects, referred to as the “Double Day Projects,” which addressed the concept of proceeds for tax credits, and referred to Alpine/AGTC’s participation in CoBon’s receipt of such proceeds. The pro formas stated a variation of the following for each of these projects: “70% = \$2,646,000/year royalty payment in lieu of taxes to CoBon/ 21% = \$793,800/year payment to PBS/ 15% = \$555,660/year payment to AGTC/ 34% = \$1,296,540/year payment to CoBon.”

45. The particular form or type of transaction by which CoBon would receive proceeds from synfuel facility owners/investors was not known at the time the Consulting Agreement was entered into. As a result, Mr. Visovsky and I understood from CoBon that there could be variations in how CoBon received the anticipated proceeds, and/or as to how the proceeds would be structured or identified. This is why Alpine/AGTC proposed the language that appeared in section 2.0 of Consulting Agreement (Exhibit 91) that stated “or other form of transfer, assignment or business transaction,” referring to how synfuel facilities would be authorized to use the Covol synfuel technology and how CoBon would receive proceeds for tax credits.

46. Mr. Visovsky and I understood that CoBon could incur costs associated with its receipt of binder fees, if the fees were received as a result of CoBon’s supply of binder agent, based

upon the September 10, 1996 License Agreement between CoBon and Covol (Exhibit 36). Mr. Visovsky and I understood that, under this License Agreement, CoBon had the right to supply binder agent to investors/owners of synfuel facilities that CoBon developed either by selling binder agent that CoBon purchased from Covol at a set price of Covol's costs plus 20 percent, or by supplying binder agent that CoBon produced at a binder agent production or "batch" plant that CoBon had the right to build in connection with any synfuel facility it developed. As such, we understood that CoBon's costs associated with its supply of binder agent would be either its costs to acquire binder agent from Covol or its costs to produce binder agent at a batch plant it developed.

47. Mr. Visovsky and I understood that CoBon could incur costs associated with its receipt of initial royalty fees, if the fees were received as a result of CoBon's sublicensing of an investor/owner, based upon the September 10, 1996 License Agreement (Exhibit 36). Mr. Visovsky and I understood that, under this License Agreement, CoBon would owe Covol certain license fees, depending upon if CoBon sublicensed investors/owners and, if so, depending upon how much capacity CoBon sublicensed. We understood that, under the September 10, 1996 License Agreement, for the first 500,000 tons per year of capacity sublicensed by CoBon, CoBon would not owe any license fee to Covol. For the second 500,000 tons per year of capacity sublicensed by CoBon, CoBon would owe Covol a license fee of \$2.00 per ton. For the third 500,000 tons per year of capacity sublicensed by CoBon, CoBon would owe Covol a license fee of \$2.50 per ton. As such, we understood that CoBon's costs associated with its sublicensing of investors/owners would be any license fee it owed to Covol under the September 10, 1996 License Agreement.

48. In the first draft of the Consulting Agreement, which was proposed by CoBon, CoBon

proposed that Alpine/AGTC would not receive a portion of any initial royalty fees or binder fees received by CoBon, and that Alpine/AGTC would be compensated for their services only by receiving 30 percent of proceeds for tax credits received by CoBon. Exhibit 76 is a true and correct copy of the first draft proposal of the Consulting Agreement received by Alpine/AGTC from CoBon on November 1, 1996.

49. The final executed Consulting Agreement (Exhibit 91) referred to all three possible types of proceeds that CoBon anticipated receiving for participating in the development of synfuel facilities, and Mr. Visovsky and I understood that Agreement provided, per its terms, that Alpine/AGTC had a right to be paid for their services based upon CoBon's receipt of proceeds for tax credits, initial royalty fees, and binders fees.

2. The Parties' Expectations Regarding Alpine/AGTC's Compensation

50. Alpine/AGTC would not have entered into the Consulting Agreement if it had excluded Alpine/AGTC's assistance and support on any synfuel project from Alpine/AGTC's scope of work, or if it had excluded any synfuel project in which CoBon participated as a basis for paying Alpine/AGTC under its terms. At the time the Consulting Agreement was negotiated and entered into, CoBon was pursuing the Pace, PBS, Consol, Bel Air, Grant Town, Miller and original Mon View Projects.

51. At the time the Consulting Agreement was negotiated and entered into, Mr. Visovsky and I intended, and CoBon had consistently demonstrated to us an intention, that Alpine/AGTC would be paid under the terms of the Consulting Agreement based upon CoBon's receipt of proceeds, if any, relating to any of the synfuel projects that CoBon was then pursuing or considering

participating in. In addition to the terms of the Consulting Agreement, the basis for this included the following:

a. Upon CoBon's request, I assisted CoBon in drafting the scope of synfuel projects that were covered by CoBon's August 20, 1996 letter agreement with Covol (Exhibit 28). Prior to entering into the Consulting Agreement, CoBon amended this scope to cover all of the synfuel projects that CoBon was pursuing or considering at the time it entered into the Consulting Agreement, in a letter that also was sent to Alpine/AGTC (Exhibit 51). This October 15, 1996 CoBon letter to Covol added the Pace Project, as well as to continue to list the PBS, Consol, Bel Air, Grant Town, Miller and original Mon View Projects.

b. CoBon's September 23, 1996 correspondence to me (Exhibit 40) contained a one page pro forma analysis for the Miller Project prepared by CoBon. The pro forma analysis stated:

A third party investor must be able to utilize between \$6,900,000 and \$7,500,000 in tax credits on its income tax return. The investor will then pay between .65¢ to .85¢ per \$1.00 of tax credit realized to CoBon for distribution. . . . Our intent is to sell the plant for the purchase price and to negotiate for the maximum (.85¢/\$1.00) return to CoBon so that we all will benefit.

Based upon our communications with CoBon at our August 28, 1996 meeting with CoBon (described in Mr. Visovsky's Affidavit), Mr. Visovsky and I understood that the phrase "for distribution" meant for distribution to Steve, Robert and Kelly Nash, Anton Tonc and Alpine/AGTC. Also based upon discussion with Mr. Nash, the phrase "so that we all will benefit" referred to the same group.

d. In the November 1996 pro formas prepared by CoBon for the Consol, PBS, Grant Town, Miller and original Mon View Projects (Exhibit 80), CoBon listed Alpine/AGTC as a payee on proceeds for tax credits from the Projects.

e. During the negotiations of the Consulting Agreement, Mr. Visovsky and I had conversations with Steve Nash of CoBon during which we discussed the “team” concept underlying the Consulting Agreement by which Alpine/AGTC and CoBon would participate in proceeds from synfuel projects received by CoBon regardless of how CoBon came to participate in the project.

f. CoBon never communicated to Alpine/AGTC at the time the Consulting Agreement was negotiated or entered into that any synfuel project would be excluded as a basis for paying Alpine/AGTC under the terms of the Consulting Agreement.

F. Alpine/AGTC’s Services To CoBon

52. As described in this Affidavit and Mr. Visovsky’s Affidavit, Alpine/AGTC assisted and supported CoBon in connection with the Pace, PBS, Consol, Bel Air, Grant Town, Miller, original and subsequent Mon View, and Nemaquin Projects. Our assistance and support on these Projects prior to entering into the Consulting Agreement was in anticipation of entering into the Consulting Agreement. In this Affidavit, I describe Alpine/AGTC’s work on the PBS, Grant Town, Bel Air, Nemaquin, and subsequent Mon View Projects. I also describe Alpine/AGTC’s work to assist CoBon in the permitting, and to assist CoBon in the construction, of the Consol Project. I also describe Alpine/AGTC’s work to general assist CoBon in marketing synfuel facilities. Mr. Visovsky describes in his Affidavit Alpine/AGTC’s work on the Pace, Miller and original MonView Projects,

and the remainder of Alpine/AGTC's work in the Consol Project.

53. I spent approximately 3,000 hours performing Alpine's scope of work under the Consulting Agreement. This work involved hundreds of meetings, telephone calls and correspondences between myself and CoBon, project hosts, vendors and other project participants, some of which are detailed in the following paragraphs and in Mr. Visovsky's Affidavit. On several days I would communicate repeatedly with CoBon, and during several time periods, I would communicate daily with CoBon. In my descriptions of the events and actions that follow here by which Alpine/AGTC assisted and supported CoBon on the Projects, I do not include most of my telephone calls with CoBon.

54. CoBon relied upon Alpine/AGTC in its dealings and communications with project hosts and vendors. CoBon never met with PBS without Alpine arranging the meeting and being present. As far as I could tell, CoBon had no meaningful business relationship with any project host or vendor located in Pennsylvania, West Virginia, or Maryland, except through Alpine/AGTC. Alpine/AGTC would draft parts or all of some of CoBon's written communications with project participants and vendors.

1. The PBS Project

55. Mr. Visovsky and I assisted and supported CoBon regarding the PBS Project. Alpine/AGTC, with the agreement of CoBon, had targeted Somerset County, Pennsylvania, a major coal mining area, for development of a synfuel facility. PBS was one of the major coal companies and the owner of large coal fines reserves in Somerset County. Alpine/AGTC's work on the PBS Project generally fell into three phases.

56. During the first phase of Alpine/AGTC's work on the PBS Project, in the last quarter of 1996, Alpine/AGTC assisted and supported CoBon in putting the Project in place with PBS. Based upon my review of the documents produced in this case and my recollection, Alpine/AGTC's work in this regard included the following actions and events:

a. On August 19, 1996, Mr. Visovsky and I were introduced by Bill Clements to Tim Phillips, the Vice President of Sales of PBS and Mark Amyot, the Sales Manager of PBS. Exhibit 1005 is a true and correct copy of excerpts of a journal that I kept, and the pages bates numbered AA023168 in that Exhibit are notes of the meeting. Mr. Clements had a long-term business relation PBS, and we had been introduced to Mr. Clements by a business associate of Mr. Visovsky. Mr. Visovsky and I introduced to Mr. Phillips and Mr. Amyot the concept of a synfuel project to be developed by CoBon, and proposed that PBS would be the project host, supply coal fines, and purchase synfuel. Mr. Visovsky followed up that meeting with an August 20, 1996 letter to Mr. Phillips, which had attached a proposed confidentiality agreement for PBS to execute and referred to our August 19 meeting. Exhibit 27 is a true and correct copy of Mr. Visovsky's August 20, 1996 letter.

b. On August 26, 1996, I reviewed PBS site information provided to me by PBS. The page bates numbered AA023172 in my journal (Exhibit 1005) is a note of the review.

c. On August 29, 1996, Mr. Visovsky and I met with Mr. Phillips of PBS, who signed the confidentiality agreement. The page bates numbered AA023179 in my journal (Exhibit 1005) is a note of the meeting; Exhibit 30 is a true and correct copy of the confidentiality agreement that AGTC faxed to CoBon. The agreement established PBS'

intent to continue pursuing the possibility of a CoBon synfuel project with PBS as the host.

On August 30, 1996, I had a telephone call with Mark Amyot. The page bates numbered AA023180 in my journal (Exhibit 1005) is a note of the call.

d. On September 3 and 4, 1996, I reviewed PBS site information and notes from our discussion with PBS on August 19, prepared an initial action plan and an economic analysis of the Project, and called Mr. Clements regarding the Project. The pages bates numbered AA023181 and AA023183-186 in my journal (Exhibit 1005) are notes of the review, the analysis and the call.

e. On September 5, 1996, CoBon sent me a proposed letter of intent for the Project for my review and comments. Exhibit 33 is a true and correct copy of CoBon's September 5, 1996 correspondence to me. The basic proposed terms were that PBS would supply a suitable site, PBS would supply coal fines, and PBS would purchase synfuel. CoBon would be responsible for obtaining financing and building the synfuel facility, and would license the facility.

f. On September 12, 1996, Mr. Visovsky and I met with PBS to review and negotiate the letter of intent. The pages bates numbered AA023194-95 in my journal (Exhibit 1005) are notes of the September 12 meeting. We communicated to CoBon, for inclusion in a revised letter of intent, the basic terms to which PBS was willing to agree.

g. On September 13, 1996, I drafted an operating plan for the Project at CoBon's request and for its use. CoBon requested the information to incorporate it in the letter of intent it was preparing for the Project. The page bates numbered AA023197 in my journal

(Exhibit 1005) is a note of the plan.

h. On September 20, 1996, CoBon sent to PBS a revised proposed letter of intent, dated September 19, 1996, that incorporated the comments communicated to CoBon from our September 12 meeting with PBS and the operating plan information that I had supplied CoBon. Exhibit 38 is a true and correct copy of the September 19, 1996 CoBon letter of intent. CoBon proposed that PBS would be paid 30 percent of the tax credit payments that CoBon anticipated receiving, which CoBon projected would be \$.70 per tax credit dollar. The letter stated that PBS should direct any questions it had to me, Mr. Visovsky, or Steve Nash. CoBon sent me a copy of the letter that had been sent to PBS.

i. On September 24, 1996, I had a telephone call with Mr. Amyot to discuss the Project. The page bates numbered AA023202 in my journal (Exhibit 1005) is a note of the call.

j. On October 2, 1996, I called PBS to discuss the Project and to set up a meeting and, on October 9, 1996, I reviewed the Project information. The pages bates numbered AA023396 and AA023400 in my journal (Exhibit 1005) are notes of the call and the review. On October 10, 1996, CoBon and I met with Tim Phillips, Mark Amyot and Bill Clement to continue negotiating the letter of intent. Exhibit 49 is a true and correct copy of a page from notes regarding the meeting. The pages bates numbered AA023404-405 in my journal (Exhibit 1005) also are notes of the meeting. CoBon and PBS reached a general agreement on terms.

k. On October 21, 1996, I performed an economic analysis of the Project. The

page bates numbered AA023409-413 in my journal (Exhibit 1005) are my calculations.

l. On October 31, November 4 and November 14, 1996, I called Mr. Clements to discuss the Project. The pages bates numbered AA023427 and AA023432 in my journal (Exhibit 1005) are notes of the calls. On October 31, 1996, CoBon sent to PBS a letter addressing the terms agreed to at our October 10, 1996 meeting, which referenced that meeting. Exhibit 70 is a true and correct copy of CoBon's October 31, 1996 letter, which CoBon sent to Alpine/AGTC. CoBon sent a revised letter of intent to PBS dated December 5, 1996. This letter stated that PBS should direct any questions it had to me or Steve Nash.

m. On December 4, 1996, I performed recalculations on the economics for the Project that were incorporated into the letter of intent that CoBon was drafting. The page bates numbered AA023439 in my journal (Exhibit 1005) is a note of the recalculation.

n. On December 11, 1996, CoBon, Mr. Visovsky and I met with PBS to conclude negotiations of, and enter into, the December 5, 1996 letter of intent. CoBon and PBS negotiated a supplement to the letter of intent that CoBon had sent to PBS on December 5, 1996. At that meeting, Mr. Phillips signed the letter of intent on behalf of PBS, as amended by the supplement (Exhibit 92). With this executed letter of intent, Mr. Visovsky and I considered that we had assisted CoBon in putting the PBS Project in place as CoBon had a firm commitment from PBS for a suitable site, a feedstock source, and the purchase of synfuel. Under the letter, CoBon had a 12 month exclusive right to evaluate PBS's existing coal fines reserves and a 12 month exclusive option to purchase coal fines from PBS waste coal reserves and from PBS filter cake pond, or coal fines from PBS' deep mine.

CoBon was given the exclusive right to lease a suitable site on PBS land. PBS agreed to purchase up to 20,000 tons per month of 10,500 BTU synfuel at a specified price. CoBon was to design, engineer, construct and market the synfuel facility, and was to use its best efforts to obtain financing for the facility development and construction. The letter expressed the parties' anticipation that a tax-oriented investor would finance the construction of the facility, purchase the facility, and use the Section 29 tax credits. PBS was to receive 30 percent of the tax credits payments to CoBon. The planned capacity of the Project was then set at 250,000 tons per year.

57. The second phase of Alpine/AGTC's work on the PBS Project, in 1997 and through April 1998, involved assisting CoBon in marketing the Project to tax-orientated investors, assisting CoBon in permitting for the Project, and negotiating an expansion of the Project with PBS. Based upon the documents produced in this action and my recollection, Alpine/AGTC's work in this regard included the following actions and events:

a. On January 8, 1997, I called Walter Heine of Walter Heine & Associates regarding permitting for the PBS Project (as well as the Bel Air Project, discussed below). The page bates numbered AA022193 in my journal (Exhibit 1005) is a note of the call. I had introduced CoBon to Walter Heine and his firm, Walter Heine & Associates, in February 1996, in connection with CoBon's consideration of retaining Alpine/AGTC to work on synfuel projects to be developed by Covol. Exhibit 18A is a true and correct copy of my February 12, 1996 letter to CoBon introducing Walter Heine & Associates. Mr. Heine had lengthy work experience with a federal mining regulatory agency and the predecessor to the

PA DEP, which regulated mining and air quality in Pennsylvania. I advised CoBon to retain Walter Heine & Associates in order to best facilitate obtaining air quality permits for the projects that had been put in place or were being put in place. As described below, CoBon retained Walter Heine & Associates to apply for the air quality permits required for the PBS, Bel Air and Consol Projects.

b. In January 1997, I received from CoBon a draft "Business" Plan for the PBS Project for my review and comments. Exhibit 127 is a true and correct copy of excerpts of the January 15, 1997 Business Plan. I understand the Business Plan had been prepared in order to market the Project to potential tax-oriented investors.

c. On January 27, 1997, I had telephone calls with CoBon, PBS and Mr. Clements regarding the Project. The page bates numbered AA022206 in my journal (Exhibit 1005) is a note of these calls.

d. On February 6, 1997, Mr. Visovsky and I met with Walter Heine and his associate Brian Fischbach at the Project site to discuss permitting strategy. Exhibit 157 is a true and correct copy of a March 25, 1997 invoice by Walter Heine & Associates that refers to the meeting. The page bates numbered AA022217 in my journal (Exhibit 1005) is a note of the meeting. We then met with the Pennsylvania Department of Environmental Protection ("PA DEP") to discuss permitting for the Project.

e. On February 25, March 13, 17, 18, 24, and 31, 1997, and April 4, 16, 17, and 28, 1997, I had telephone calls with Mr. Fischbach of Walter Heine & Associates regarding the CoBon's application for an air quality permit for the Project, which Walter Heine and

Associates was preparing. Exhibits 156, 165 and 180 are true and correct copies of Walter Heine & Associates invoices to CoBon that list the calls; page bates numbered AA023179 in my journal (Exhibit 1005) is a note of the February 25 call.

f. On April 9, 1997, CoBon sent Alpine/AGTC a draft summary investment statement regarding the Project for our review and comments. Exhibit 164 is a true and correct copy of the document sent to us, with comments by me. We understood that the statement was to be used for marketing the Project to tax-oriented investors.

g. On April 12, 1997, I advised to CoBon to notify PBS regarding CoBon's intent to use PBS' Cambria fines. Exhibit 166 is a true and correct copy of my April 11, 1997 correspondence to CoBon that contains this advice. CoBon provided that notice in an April 16, 1997 letter to PBS, on which I was copied. Exhibit 169 is a true and correct copy of CoBon correspondence to me that contains a copy of CoBon's April 16, 1997 letter to PBS.

h. On April 12, 1997, at CoBon's request, I prepared and sent to CoBon an economic analysis of the Project for use in marketing the Project. Exhibit 166 is a true and correct copy of the analysis.

i. On April 18, 1997, CoBon wrote to Mr. Heine stating that Walter Heine & Associates' invoices for work on the Bel-Air and PBS Projects in February and March 1997 had exceeded CoBon's expectations, and that "before further work is performed, a budget, scope of work and critical path must be established. Until funding is received it is the intent of Cobon to proceed only with necessary critical path items required and pursuant to an

authorized and written scope of work.” Exhibit 171 is a true and correct copy of CoBon’s letter, on which I was copied. I had advised CoBon against sending the letter. I had telephone calls with Mr. Heine regarding CoBon’s letter. On April 30, 1997, Mr. Heine sent a letter to CoBon in response, saying Walter Heine & Associates had stopped work. Mr. Heine proposed a scope of work for permitting for the PBS project. I was copied on Mr. Heine’s letter. On April 18, 1997, I wrote to CoBon advising it that CoBon’s inability to make payments was jeopardizing its development efforts and that it should not make any misrepresentations to potential investors/owners. Exhibit 174 is a true and correct copy of my April 28, 1997 correspondence to CoBon. I was copied on Walter Heine & Associates’ April 30, 1997 letter on the subject.

j. On May 14, 19, 20 1997, June 11, 12, 17, 19, 20, 23, 25 and 26, 1997, July 3, 14, 15, 22, 23 and 28, 1997, and August 1, 11, 18, 19, 21, and 29, 1997, I had telephone calls with either Mr. Heine or Mr. Fischbach regarding CoBon’s application for an air quality permit for the PBS Project. During this time, as discussed below, the planned capacity of the Project had increased to 650,000 tons per year, which increase had permitting implications. Exhibits 220, 226, and 254 are true and correct copies of Walter Heine & Associates invoices to CoBon for the Project that list the calls.

k. On May 14, 1997, I drafted comments to CoBon on a Descriptive Memorandum regarding the Project, which I forwarded to CoBon. The Descriptive Memorandum provided a detailed description of the Project for marketing the Project to tax-oriented investors. Exhibit 180A is a true and correct copy of my comments with notes by

CoBon. Exhibit 183 is a true and correct copy of an excerpt of the Descriptive Memorandum.

l. On June 5, 1997, I was copied on a CoBon memorandum to PBS that provided a status update on the Project. CoBon reported that it was having a difficult time marketing the Project, due to uncertainty over Section 29 regulations. Exhibit 191 is a true and correct copy of CoBon's memorandum. Also on June 5, 1997, I sent to CoBon a report on permitting activities and status that I had prepared, at CoBon's request. Exhibit 192 is a true and correct copy of my June 5, 1997 report. I directed Walter Heine and Associates to send their firm biographical material to CoBon.

m. On June 10, 1997, CoBon sent to me and Mr. Visovsky a list of due diligence questions by Enova, a potential investor/owner for the Project. Exhibit 195 is a true and correct copy of CoBon's June 10, 1997 correspondence to us. CoBon informed us that it needed our assistance in responding to the questions. On June 12, 1997, I worked on preparing responses to the questions. Exhibit 196 is a true and correct copy of my notes on the subject. On June 17, 1997, CoBon sent me Enova's letter of interest regarding possible investment in the Project. Exhibit 198 is a true and correct copy of CoBon's June 17, 1997 correspondence to me. On June 23, 1997, Mr. Visovsky and I sent CoBon responses to Enova's due diligence questions. Exhibit 202 is a true and correct copy of our response.

n. On June 18, 1997, CoBon and I met with PBS to discuss financing the Project. The page bates numbered AA022284 in my journal excerpts (Exhibit 1005) is a note of the meeting. On July 7, 1997, I wrote to CoBon as a follow-up to our June 18, 1997

meeting, with reference to the meeting. Exhibit 211 is a true and correct copy of my July 7, 1997 correspondence to CoBon.

o. On June 19, 1997, CoBon sent me calculations for the air quality permit application for my review and comments. Exhibit 201 is a true and correct copy of CoBon's correspondence to me. I called CoBon as requested and discussed the matter.

p. On June 25, 1997, CoBon sent me a draft outline of a financing proposal by Ridgewood for the Project, which had been prepared by CoBon's financial advisor that CoBon had retained to assist it in finding investors for the synfuel projects we had put in place, Coalco Company ("Coalco"). Exhibit 203 is a true and correct copy of CoBon's June 24, 1997 correspondence to me.

q. On July 8, 1997, I met with Bill Leedy of Constellation Energy Corporation ("Constellation"), regarding Constellation's interest in investing in the Project. Constellation is a large power company headquartered in Baltimore, Maryland, and had been identified as a potential investor/owner for the Project by Don Logan of Coalco. The page bates numbered AA022293 in my journal (Exhibit 1005) is a note of the meeting. Over the next several months, Mr. Visovsky and I worked extensively with Constellation regarding its interest in investing in the PBS Project, and in the Consol Project after Constellation became aware that CoBon was working to put in place a project with Consol (which was a major coal supplier to Constellation).

r. On July 15, 1997, CoBon and I met with PBS to discuss expanding the capacity of the Project, to advise PBS of Constellation's interest in financing and purchasing

the Project, and to advise PBS of Constellation's due diligence requirements. The page bates numbered AA022300 in my journal (Exhibit 1005) is a note of the meeting. As a follow-up to that meeting, CoBon wrote to PBS on July 17, 1997, referencing the meeting and stating that I would set up a follow-up meeting to discuss expansion of the Project. Also as a follow-up to that meeting, on July 17, 1997, CoBon wrote to Alpine/AGTC stating, "You need to meet with Tim Phillips as soon as possible to work out details on the possibility of increasing the PBS Project to a 500-750,000 ton per year facility." In this letter, CoBon also asked for Alpine/AGTC's assistance in preparing information about the Project needed by Constellation. CoBon stated in the letter that it needed Alpine/AGTC's "assistance in expediting the collection of this information." CoBon requested the information in order to be able to prepare "financial models." Exhibit 213 is a true and correct copy of CoBon's July 17, 1997 letter to PBS. Exhibit 214 is a true and correct copy of CoBon's July 17, 1997 correspondence to Alpine/AGTC.

s. In its July 17, 1997 letter to PBS (Exhibit 213), CoBon stated, "We are very confident with the projection development team that we have assembled." I understood that the "team" included Alpine/AGTC. Mr. Visovsky and I were copied on the letter.

t. On July 18, 1997, I performed economic calculations for the Project with Mr. Visovsky, and had a telephone call with PBS regarding a further meeting and to obtain for CoBon the sales price PBS would offer coal fines feedstock for the PBS Project and the purchase price PBS was willing to offer for synfuel from the Project. These prices were key both for CoBon's marketing of the Project and for the operation of the Project. The pages

bates numbered AA022304-306 in my journal (Exhibit 1005) are notes of the calculation. Exhibit 217 is a true and correct copy of a note regarding the call. On July 18, 1997, as requested by CoBon, Mr. Visovsky sent CoBon the economic analysis of the Project that he and I had prepared, for discussion with PBS and as a preliminary for preparing a Project pro-forma for Constellation. Exhibit 215 is a true and correct copy of Mr. Visovsky's July 18, 1997 correspondence to CoBon. Mr. Visovsky wrote: "We should discuss before our meeting on Monday in Somerset with Tim Phillips. We view this as an internal document to be utilized to develop the pro-forma. Mark and I will then prepare an operations narrative from the pro-forma once it is complete. We would like to review pro-forma before it is sent to Constellation."

u. On July 22, 1997, I called CoBon to discuss the PBS Project. The page bates numbered AA022307 in my journal (Exhibit 1005) is a note of the call.

v. On July 23, 1997, I wrote to CoBon regarding the permitting status of the Project, based upon the Project's planned expansion from 250,000 tons per year to 650,000 tons per year. This had caused the planned location of the facility to change, which had permitting implications. I advised CoBon as to what permits were and were not required. I advised that an air quality permit was the only "new" permit that was required. Exhibit 219 is a true and correct copy of my July 23, 1997 letter to CoBon. I used my MR International letterhead, as I sometimes did for consulting matters.

w. On July 25, 1997, I had a telephone call with Tim Phillips of PBS regarding the PBS Project. The pages bates numbered AA022310-311 in my journal (Exhibit 1005)

are notes of the call.

x. On July 28, 1997, I reviewed the PBS Project permit information, and had a discussion regarding the same with Brian Fischbach of Walter Heine & Associates. The page bates numbered AA022312 in my journal (Exhibit 1005) is a note of the review and call. Walter Heine & Associates' August 1997 invoice (Exhibit 226) also lists the call.

y. On July 29, 1997, CoBon sent Alpine/AGTC draft pro formas prepared by Coalco for the Project, and a document by Constellation that set forth its due diligence issues and objectives. Exhibit 222 is a true and correct copy of one of the sets of pro-formas that CoBon sent (along with Constellation's due diligence information).

z. On July 31, 1997, I reviewed site and coal fines information regarding PBS' Cambria and Shade Creek locations. The page bates numbered AA022314 in my journal (Exhibit 1005) is a note of the review.

aa. On August 21, 1997, CoBon sent me a draft letter of intent from Constellation setting forth its proposal for financing and purchasing the Project. Exhibit 228 is a true and correct copy of CoBon's August 21, 1997 correspondence to me.

bb. On August 4 and 28, 1997, I met with PBS to discuss the expansion of the project, PBS' willingness to purchase synfuel, and Constellation's proposals. The pages bates numbered AA022320-321 and AA022335 in my journal (Exhibit 1005) are notes of the meetings.

cc. On August 28, 1997, I received from Walter Heine and Associates an Independent Engineer's Report regarding permitting for the Project. Exhibit 233 is a true

and correct copy of the report that I received.

dd. On September 2, 1997, CoBon sent Mr. Visovsky a copy of Coalco's mark-up of Constellation's investment proposal for the Project. Exhibit 234 is a true and correct copy of CoBon's correspondence.

ee. On September 4, 1997, I had a telephone call with Constellation regarding the Project and Constellation's investment proposal. We discussed the prices to which PBS would agree to purchase synfuel. The page bates numbered AA022339 in my journal excerpts (Exhibit 1005) are notes of the meetings. As a follow-up to my call, CoBon sent a September 4, 1997 memorandum to Constellation setting forth the prices at which PBS would agree to purchase synfuel, which referenced the call. Exhibit 241 is a true and correct copy of CoBon's September 4, 1997 correspondence.

ff. On September 9, 1997, I received from Constellation a basic flow process chart for the Project and cost calculations for my review. Exhibit 247 is a true and correct copy of Constellation's September 9, 1997 correspondence to me. On the same day, I had a telephone call with Mr. Leedy regarding the Project. The page bates numbered AA022341 in my journal (Exhibit 1005) is a note of the call.

gg. In October 1997, Constellation withdrew from considering investing in the PBS Project (along with withdrawing from considering investing in the Consol Project). Constellation did so in order to pursue an investment in the Pace Project. On October 23, and November 20, 1997, I had telephone calls with Tim Phillips and Bill Clements regarding the Project. The pages bates numbered AA022361 and AA022376 in my journal (Exhibit

1005) are notes of the calls.

hh. On November 20, 1997, I had a telephone call with Tim Phillips and obtained PBS' firm commitment to purchase synfuel from the PBS Project at specified prices, depending upon the Btu or sulphur content of the synfuel. On the same day, PBS wrote to me documenting its commitment. Exhibit 303 is a true and correct copy of PBS' November 20, 1997 letter to me.

ii. I met with PBS on December 4, 1997, to discuss the Project. The page bates numbered AA022382 in my journal (Exhibit 1005) is a note of the meeting.

jj. On March 4, 1998, I met with PBS, on April 14, 1998, Mr. Visovsky, Mr. Clerments and I met with PBS and, on April 27, 1998, I called PBS, in order to discuss the Project and to maintain PBS' interest in the Project. The pages bates numbered AA022423, AA022434 and AA022445 in my journal (Exhibit 1005) are notes of the meetings and the call. By this time, the deadline for placing the Project's synfuel facility in service was impending and CoBon still had not located an investor/owner for the Project.

58. The third phase of Alpine/AGTC's work on the PBS Project started in May 1998. This phase involved a restructuring of the Project when West Materials, Inc. ("West Materials") came in to finance the construction of the project in May 1998, weeks before the July 1, 1998 deadline under Section 29 for placing the Project in service. Double Day had introduced CoBon to West Materials, which proposed that it finance the construction of the PBS Project synfuel facility. As I learned from CoBon and Tim Lanager, a consultant to West Materials, this proposal led to the restructuring of the PBS Project. The project company that CoBon had jointly formed with Double

Day for the Miller and Mon View Projects, Double D Energy Association, became the project company for the PBS Project. West Materials was given sixty percent ownership of Double D Energy Association and became its manager. CoBon and Double Day each owned twenty percent of Double D Energy Association. The synfuel facility of the Project was constructed and placed in service in June 1998 by Double D Energy Association, using a pre-January 1, 1997 construction contract belonging to West Materials. Based upon my review of the documents produced in this case and my recollection, Alpine/AGTC's work in this phase included the following actions and events:

a. In May 1998, CoBon agreed with West Materials to commit at least 250,000 tons per year of its license capacity to the Project and to negotiate with Covol for 650,000 tons per year of licensed capacity, which was to be the intended capacity of the project. West Materials agreed to assume financial responsibility for construction and initial operation of the Project. Exhibit 440 is a true and correct copy of a May 21, 1998 memo by Steve Nash to Robert Nash, produced by CoBon in this action, which relates to this agreement. Steve Nash wrote that the memorandum "outlines the general terms of our agreement with Bill West of West Materials, Inc. . . . as they relate to the PBS Project."

b. On May 21, 1998, I met with PBS to discuss West Materials' investment in the Project. The page bated numbered AA022462 in my journal (Exhibit 1005) is a note of the meeting.

c. On June 2, 1998, I had telephone calls with Mr. Phillips and Mr. Lanager regarding the restructuring. Exhibit 446 is a true and correct copy of my notes from my June 2, 1998 call with Mr. Lanager. Exhibit 459 is a true and correct copy of a June 17, 1998

letter agreement that CoBon sent to me on June 23, 1998, regarding the restructuring of the PBS Project.

d. In June 1998, CoBon agreed to provide an additional 400,000 tons per year of license to the Project, which meant the Project was supplied with 650,000 tons per year of license. Exhibit 466 is a true and correct copy of a June 24, 1998 letter from CoBon to West Materials, produced by CoBon in this action, that addressed CoBon providing the Project with an additional 400,000 tons per year of license. Exhibit 467 is a Sublicense Agreement, made effective June 24, 1998, between CoBon and Double D Energy Association, produced by CoBon in this action, which stated CoBon sublicensed Double D Energy Association with 650,000 tons per year of capacity for the PBS Project.

e. I received a June 5, 1998 letter from Mr. Fischbach of Walter Heine & Associates to the PA DEP on which I was copied regarding revisions to the Air Quality Permit Application for the Project. Exhibit 447 is a true and correct copy of the correspondence.

f. On June 10, 1998, the PA DEP issued an air quality permit to CoBon for the PBS Project. The permit was issued in the name of CoBon Synfuel #1, LLC, which I understood to be a CoBon related company used as the project company for the PBS Project. Exhibit 450 is a true and correct copy of the PA DEP's June 10, 1998 permit approval.

59. CoBon continued to rely upon Alpine to be its liaison with PBS after the PBS Project synfuel facility had been placed in service. In December 1999, the PBS Project synfuel facility was sold to an investor/owner that West Materials' consultant, Mr. Lanager, had located, Pennsylvania

Power & Light ("PP&L"). Double D Energy Association, which had changed its name to Somerset Synfuel No. 1, LLC ("Somerset), sold the PBS Project to PP&L. Exhibit 826 is a true and correct copy of excerpts of the December 1999 Sale and Purchase Agreement involving the PBS Project. This document shows that the sale involved Somerset selling to Beta Synfuels, LLC (which was owned by PP&L) its membership interest in Central City Synfuel, LLC, which held the synfuel facility and its related project contracts. This sale was amended in June 2000. Exhibit 876 is a true and correct copy of excerpts of the June 19, 2000 Amended and Restated Sale and Purchase Agreement involving the PBS Project; Exhibit 875 is a true and correct copy of a "Transaction Summary" relating to the amended sale and purchase transaction. Based upon my review of the documents produced in this action and my recollection, my assistance to CoBon during this time included the following:

a. On July 23, 1998, I met with PBS, and on July 29, 1998, Mr. Visovsky and I met with PBS, CoBon, Mr. Clements and Mr. Lanager regarding selling the Project to a tax-oriented investor. The pages bated numbered AA022476 and AA022478-79 in my journal (Exhibit 1005) are notes of the meetings. On August 5, 1998, as a follow-up to the July 29 meeting, CoBon wrote to West Materials regarding preparing for the sale of Project, a copy of which CoBon sent to me. Exhibit 499 is a copy of CoBon's August 5, 1998 correspondence, which referenced the July 29 meeting.

b. On or about February 2001, I was contacted by Kevin Skiles, a sales representative for Freedom Industries of Charleston, West Virginia, requesting my assistance in marketing their binder agent to existing synfuel facilities. In addition to this direct contact

by a competing binder, I also was made aware that another chemical company from the Pittsburgh, Pennsylvania area was attempting a similar marketing plan. Having been made aware of these competing chemical companies, I contacted Steve Nash to inform him of this potential market threat, which threatened to limit the proceeds flowing to original synfuel developers, such as the CoBon development team. In March 2001, I was informed that CoBon would be supplying the PBS Project with unlimited license to use the Covol synfuel technology to produce synfuel. This raised the issue of whether PP&L would use the Covol proprietary binder agent, or binder agent available from other vendors, for its production in excess of 650,000 tons per year. I notified CoBon of this issue, and CoBon requested that I write to PBS in order to solicit their support in getting PP&L to purchase Covol binder agent for the additional licensed capacity. Exhibit 929 is a true and correct copy of a March 14, 2001 letter from CoBon to me that made this request. As requested, on March 21, 2001, I wrote to PBS asking for its support, and in an April 12, 2001 letter to me, PBS stated it would support CoBon in attempting to get PP&L to purchase Covol binder for the additional capacity. Exhibit 930 is a true and correct copy of my March 21, 2001 letter to PBS.

60. Exhibit 1007 is a true and correct copy of an Affidavit by Tim Phillips relating to the PBS Project. This affidavit was filed in support of Alpine/AGTC's motion for summary judgment in the first action filed by CoBon regarding the Consulting Agreement.

61. The PBS Project resulted in the development of a synfuel facility that qualified for Section 29 tax credit treatment (the "PBS Synfuel Facility"). The PBS Project synfuel facility was placed in service before the Section 29 deadline of July 1, 1998 for placing synfuel facilities in

service. In November 2001, Steve Nash informed me by telephone that PP&L would be receiving a favorable PLR for that facility. The page bates numbered AA022894 in my journal (Exhibit 1005) is a note of the call.

62. CoBon never notified or informed Alpine/AGTC that CoBon had not participated in the development of the PBS Synfuel Facility or that the PBS Project was excluded from the Consulting Agreement, either as a basis for paying Alpine/AGTC or such that Alpine/AGTC's assistance and support on the Project was not performance of their scope of work under the Consulting Agreement. Mr. Visovsky and I always understood, and CoBon consistently demonstrated an understanding, that CoBon had participated in the development of the PBS Synfuel Facility such that the PBS Project was covered by the Consulting Agreement. The basis for this included the following:

a. Alpine/AGTC had assisted CoBon in obtaining the December 1996 letter of intent executed by PBS (Exhibit 92), which had put the PBS Project in place and I had assisted CoBon in obtaining PBS' firm commitment of prices at which it would purchase synfuel from the Project (Exhibit 303). The project contracts for the PBS Project were not entered into until February 1999 (which were made effective as of June 1998). Exhibit 599 is a true and correct copy of what I understand is the Lease for the PBS Project; Exhibit 600 is a true and correct copy of what I understand is the "Sale and Purchase Agreement" for the PBS Project providing for PBS' sale of feedstock to the Project and purchase of synfuel from the Project.

b. Exhibit 161 is a true and correct copy of an April 7, 1997 letter from Covol

to CoBon, which CoBon produced in this action. In this letter, Covol referred to the PBS and Consol Projects as CoBon's projects.

c. Exhibit 170 is a true and correct copy of a CoBon April 18, 1997 letter to Covol. This letter stated: "CoBon Energy, LLC is continuing with the development of several existing projects. At this point, however, CoBon's primary focus is the acquisition of project funding and the associated sale of its existing projects to tax oriented investors . . . CoBon is currently looking for funds for the following projects: 1. Miller Mining. . . 2. Monview Mining. . . 3. PBS Coals, Inc. . . . 4. Bel Air Coal Sites . . . 5. Consol, Inc. 2 sites not yet determined."

d. The air quality permit for the PBS Project was obtained by CoBon and issued in CoBon's name (Exhibit 450). This was the only new permit obtained for the Project.

e. I am unaware that West Materials was ever licensed or authorized by Covol to develop or license synfuel facilities. CoBon participated in the sale of the Project as a member of the project company for the Project (Somerset). CoBon consented to the sale of the Project to PP&L as a member of Somerset. Exhibit 816 is a true and correct copy of a December 1999 resolution by Somerset regarding the sale, which was produced by CoBon in this action.

f. I understand that CoBon always had the exclusive right to license the PBS Project to use the Covol synfuel technology. CoBon initially committed 250,000 tons per year of license to the Project, then, in June 1998, supplied the Project with 650,000 tons per year of license. Finally, in December 2001, CoBon supplied unlimited license to the Project,

allowing it to produce an unlimited amount of synfuel using the Covol synfuel technology. Exhibit 949 is a true and correct copy of an October 30, 2001 "PBS Additional License Agreement," between Covol and CoBon. The recitals in that agreement stated: "CoBon owns the exclusive rights to license the Somerset Synfuel, LLC project . . . CoBon as the owner of the exclusive rights to sublicense the PBS Project. . . ." As to additional license, the agreement stated: "CoBon and Covol acknowledge and agree that CoBon's rights under the [September 10, 1996] License Agreement to use the Covol coal technology and to use Covol's patented binder shall be for an unlimited aggregate capacity as such relate to the PBS Project." Additional documents that I understand relate to the licensing of the PBS Project are included as Exhibits 440, 466, 467, 806, 897.

g. Alpine continued to act as CoBon's liaison with PBS with regard to the PBS Synfuel Facility even after that facility had been placed into service in June 1998. During this time, CoBon never notified Alpine/AGTC that the PBS Synfuel Facility had not been developed by CoBon.

h. At the same time West Materials' consultant was marketing the PBS Project synfuel facility, so was CoBon's financial advisor, Coalco.

i. Exhibit 830 is a true and correct copy of a December 20, 1999 Covol press release announcing the sale of the PBS Project to PP&L, produced by CoBon in this action. In that press release, Steve Nash of CoBon is quoted as saying "the transaction marks the culmination of significant development efforts by West Materials and CoBon Energy." Covol's President is quoted as saying that Covol is "very pleased with CoBon's

consummation of this sale.”

j. In its March 14, 2001 letter requesting Alpine to solicit PBS’ support in getting PP&L to purchase and use Covol binder agent for the additional licensed production at the PBS Project in excess of 650,000 tons per year (Exhibit 929), CoBon stated, “With regard to our relationship with [PBS], particularly Tim Phillips, CoBon has performed as originally represented by placing in service a project which has been beneficial to PBS.” In this letter, CoBon identified itself and Alpine/AGTC as the “original team of developers” for the PBS Project.

k. In Alpine’s March 21, 2001 letter to PBS written in response to CoBon’s March 14, 2001 letter (Exhibit 930), I identified CoBon as “the original developer” of the PBS Project.

l. In a November 18, 1999 “Agreement” (Exhibit 806), Covol and CoBon agreed that CoBon had used a portion of its license to develop synfuel project on the PBS Synfuel Facility.

m. I understand that CoBon received a share of the contingent payments paid by the investor/owner of the PBS Project synfuel facility, PP&L, as part of the purchase price for that facility, and that investor/owner paid CoBon earned royalty fees as part of the license fee for that facility.

2. The Bel Air Project

63. Mr. Visovsky and I assisted and supported CoBon regarding the Bel Air Project. Bel Air was a small mining company that controlled a large coal fine reserve at its coal operation site in

Mather. Prior to October 24, 1996, I was introduced to Tom Guidi, the President of Bel Air, by Stanley Sears, with whom I had a long term business relationship. I then introduced Bel Air to CoBon for purposed of pursuing a synfuel project. The proposed project involved developing a synfuel facility at the Mather site, using the Mather coal fines, and selling synfuel to Bel Air for marketing to its existing customers. Based upon my review of the documents produced in this case and my recollection, Alpine/AGTC's work on the Bel Air Project included the following actions and events:

a. Prior to October 24, 1996, Mr. Sears and I met with Mr. Guidi to propose and discuss a synfuel project at the Mather site.

b. On December 14, 1996, CoBon sent me a draft letter of intent setting forth terms for the proposed project. Exhibit 96 is a true and correct copy of CoBon's December 14, 1996 correspondence to me. I had assisted CoBon in drafting the letter of intent. The letter stated that Mr. Guidi could direct any questions he had to me or Mr. Sears.

c. On December 18, 1996, I reviewed a revised letter of intent for the Project. The page bates numbered AA023452 in my journal (Exhibit 1005) is a note of that review.

d. On December 20, 1996, Mr. Sears and I met with Mr. Guidi to finalize the letter of intent, which Mr. Guidi executed. The page bates numbered AA023453 in my journal (Exhibit 1005) is a note of the meeting. With Mr. Guidi's signing of the letter, Mr. Visovsky and I considered that we had assisted CoBon in putting the Bel-Air Project in place. CoBon had obtained rights to evaluate and purchase coal fines from Bel-Air, a commitment from Bel-Air to make facility sites available, and a commitment from Bel-Air

to purchase synfuel meeting certain specifications. Exhibit 99 is a true and correct copy of an unsigned copy of the letter of intent that I recall is what was signed by Mr. Guidi.

e. On January 2 and 8, 1997, I called Walter Heine regarding permitting for the Bel Air Project, as well as for the PBS Project. The pages bates numbered AA023455 and AA022193 in my journal (Exhibit 1005) are notes of the calls.

f. On January 17, 1997, I met with Walter Heine regarding CoBon retaining his firm, Walter Heine & Associates, to obtain an air quality permit for the Bel Air Project. The page bates numbered AA022201 in my journal excerpts (Exhibit 1005) is a note of the meeting.

g. On January 21, 1997, Mr. Heine sent CoBon a proposal for Walter Heine & Associates assisting CoBon in obtaining permits "with consideration and guidance" by me, which referenced our January 17, 1997 meeting. Steve Nash of CoBon signed the proposal on January 27, 1997 authorizing Walter Heine & Associates to proceed. Exhibit 130 is a true and correct copy of the executed proposal.

h. On January 28, 1997, CoBon wrote to me saying "thank you for your assistance on the Bel Air Project as we enter the permitting arena." CoBon enclosed the retainer agreement with Walter Heine & Associates and asked that I provide a copy to Mr. Heine at our planned meeting the following week. CoBon did not object to having to retain Walter Heine & Associates. Exhibit 132 is a true and correct copy of Mr. Nash's January 28, 1997 communication.

i. On February 6, 1997, Mr. Visovsky and I met with Mr. Heine and his

associate Mr. Fischbach at the Project site to review permitting strategy, and then met with the PA DEP to review with them their requirements for obtaining an air quality permit for the Project. The page bates numbered AA022217 in my journal (Exhibit 1005) is a note of the meeting. Walter Heine & Associates March 25, 1997 invoice for the Bel Air Project (Exhibit 156) lists the meeting. I reported to CoBon regarding the meeting.

j. On March 5, 1997, I provided to CoBon comments to the “Business Plan” that CoBon had prepared for the Bel Air Project that I understood would be used to market the Project to tax-oriented investors. Exhibit 141 is a true and correct copy of this March 5, 1997 document.

k. In April 1997, Walter Heine & Associates stopped its work on the Bel Air Project in response to CoBon’s April 18, 1997 letter that stated a budget and scope of work have to be agreed to before Walter Heine & Associates should proceed further. I had telephone calls with Mr. Heine in this regard. On April 30, 1997, Mr. Heine wrote to CoBon providing a scope of work for permitting for the Bel Air Project. I was copied on the letter.

64. Alpine/AGTC did not work on the Bel Air Project after April 1997 and it did not result in the development of a synfuel facility. CoBon let the Project go, in favor of pursuing the other synfuel projects we were working on at that time. At that time, CoBon did not have enough license under its September 10, 1996 License Agreement with Covol to pursue the Bel Air Project as well as the other projects CoBon was pursuing at that time.

3. The Grant Town Project

65. Mr. Visovsky and I assisted and supported CoBon regarding the Grant Town Project.

Edison Mission, headquartered in California, operated a co-generation plant at Grant Town, West Virginia, which used coal fines from a significant reserve as fuel for the plant. The Grant Town Project had started during the time Alpine/AGTC were assisting Covol in locating and developing synfuel projects. Mr. Visovsky and I had introduced CoBon to Edison Mission during that time, and the Grant Town Project was one of the synfuel projects CoBon wanted to continue to pursuing once it obtained license to develop synfuel projects itself. The project proposal that Alpine/AGTC were pursuing with Edison Mission, first on behalf of Covol and then on behalf of CoBon, involved constructing a synfuel facility at the Grant Town site that would use the Grant Town washed coal fines and supply synfuel to Edison Mission's co-generation plant as fuel to supplement its coal fines fuel. Based upon my review of the documents produced in this case and my recollection, Alpine/AGTC's work on the Grant Town Project included the following actions and events:

a. On September 9, 1996, CoBon sent Paul Multari of Edison Mission a proposed letter of intent setting forth terms for the Project. I had assisted CoBon in drafting the letter of intent. Exhibit 34 is a true and correct copy of CoBon's September 9, 1996 correspondence.

b. On September 13, October 2 and October 3, 1996, I had telephone calls with Stanley Sears regarding the Project. The pages bates numbered AA023196, AA023396 and AA023398 in my journal (Exhibit 1005) are notes of calls.

c. On October 10, 1996, CoBon and I met with Mike Pappenfus of Edison Mission regarding the Project proposal. The pages bates numbered AA023401-403 in my journal (Exhibit 1005) are notes of the meeting.

d. On October 14, 1996, I drafted an economic analysis of the Project, for purposes of convincing Edison Mission of the value of the Project. Exhibit 50 is a true and correct copy of my calculations. I continued to work on the analysis and, on October 16, 1996, sent a revised version of the analysis to CoBon. Exhibit 52 is a true and correct copy of my correspondence to CoBon.

e. On November 1, 1996, CoBon wrote to Edison Mission regarding the economic analysis I had prepared. The letter referenced our October 10, 1996 meeting and stated that CoBon was ready to proceed with the Project. The letter stated that Edison Mission could direct any questions he had to either me or Steve Nash. CoBon sent me a draft of the letter for my review and comment before sending it to Edison Mission. Exhibit 74 is a true and correct copy of CoBon's November 1, 1996 correspondence and a draft of the same.

66. Sometime in December 1996, CoBon elected not to pursue the Grant Town Project, in favor of pursuing the other projects it was pursuing at that time, and it did not result in the development of a synfuel facility. Alpine/AGTC did not work on the Project after November 1996. CoBon did not have enough license available under its September 10, 1996 License Agreement with Covol to pursue the Grant Town Project as well as the other projects CoBon was pursuing in November and December 1996.

4. The Subsequent Mon View Project

67. Mr. Visovsky and I assisted and supported CoBon regarding the subsequent Mon View Project. In August 1997, Mon View Mining terminated its site use agreement with Double

Day, which had ended Double Day's ability to develop the Mon View Project. Another firm, Creative Environmental, was looking to develop at the Mon View site a facility that would process or wash the waste coal fines located at that site. The Project proposal we pursued for CoBon was for CoBon to develop a synfuel facility in connection with Creative Environmental's wash facility project. Based upon my review of the documents produced in this case and my recollection, Alpine/AGTC's work on the subsequent Mon View Project included the following actions and events:

- a. On July 22, 1997, I met with Robert Taylor of Creative Environmental, to discuss Creative Environmental's project to build a coal fines wash facility, and to introduced the possibility of CoBon developing a synfuel facility that would use the washed fines from the Creative Environmental facility as feedstock. The pages bates numbered AA022308-309 in my journal (Exhibit 1005) are notes of the meeting.
- b. On November 17, 1997, CoBon sent me a November 14, 1997 letter from Creative Environmental to CoBon offering to make available the washed coal fines from its wash facility project for use in a synfuel facility. Exhibit 299 is a true and correct copy of the offer.
- c. On November 24, 1997, as requested by CoBon, Mr. Visovsky and I met with Robert Taylor of Creative Environmental Solutions regarding the proposed Project. The pages bates numbered AA022378-79 in my journal (Exhibit 1005) are notes of the meeting.
- d. On November 26, 1997, Mr. Visovsky sent to Mr. Taylor an economic analysis that Mr. Visovsky had prepared for the purpose of promoting the project. The

proposal was that Creative Environmental Solutions and CoBon would form a joint venture and both receive 50 percent of the net revenues from the Project. Exhibit 305 is a true and correct copy of Mr. Visovsky's November 26, 1997 analysis.

68. CoBon did not actively pursue the subsequent Mon View Project after November 1997, and it did not result in the development of a synfuel facility. After November 1997, Creative Environmental Solutions' coal fines wash facility project was not proceeding as planned and we were focusing on the Consol Project; by spring of 1998, Creative Environmental Solutions still had not proceeded with its project. In the spring of 1998, CoBon offered to purchase washed coal fines from Creative Environmental Solutions to use as short term feedstock for the Consol Project pending completion of the wash facility to be built in connection with the Consol Project, but Creative Environmental Solutions' coal fines wash facility had not been built by that time.

5. The Nemaquin Project

69. Alpine/AGTC assisted and supported CoBon regarding the Nemaquin Project. The Nemaquin Project was a back-up to the Consol Project. LTV Steel owned a large coal fine reserve located near Nemaquin, Pennsylvania, in southwestern Pennsylvania. Stanley Sears put me in contact with a firm, Land Reclamation Systems, Inc. ("Land Reclamation"), that was working with the owners of two patented coal fines washing processes and was looking to develop a coal fines processing or wash facility project implementing these processes at the Nemaquin site. The Project proposal that CoBon pursued with our assistance was CoBon developing a synfuel facility in connection with the wash facility project that Land Reclamation was pursuing. Based upon my review of the documents produced in this case and my recollection, Alpine/AGTC's work in this

regard included the following actions and events:

a. On November 4, 1997, I met with Dennis Clarke of Land Reclamation to discuss its coal fines wash facility project and the possibility of CoBon pursuing development of a synfuel facility in connection with Land Reclamation's project. The page bates numbered AA022368 in my journal (Exhibit 1005) is a note of the meeting.

b. On November 6, 1997, I reviewed the Nemacolin site information and sent to CoBon information regarding the Nemacolin site. The page bates numbered AA022369 in my journal (Exhibit 1005) is a note of the review. Exhibit 293 is a true and correct copy of my November 6, 1997 correspondence with CoBon. I wrote to CoBon that I would be meeting with LTV/Jones & Laughlin Steel the next week regarding obtaining access to the site.

c. On November 10, 1997, I met with LTV/Jones & Laughlin Steel regarding securing CoBon access to the site to conduct due diligence.

d. On November 18, 1997, I received a draft proposed letter of intent from Land Reclamation to a consultant to LTV Steel proposing the Project. The letter stated: "On the basis of information provided by you . . . and subsequent discussions with Messrs. Rodak and Visovsky of CoBon, LLC, I am pleased to offer you the attached Joint Venture Proposal on behalf of Dr. Robert Bender, CoBon LLC, and Land Reclamation Systems, Inc. Our proposal to manufacture a synthetic fuel combines three patented and proprietary technologies." Exhibit 302 is a true and correct copy of the November 18, 1997 correspondence.

e. On December 2, 1997, CoBon wrote to LaSalle Partners regarding CoBon's interest in the Project. Exhibit 308 is a true and correct copy of CoBon's December 2, 1997 letter regarding the Project.

f. On December 22, 1997, I sent CoBon a draft letter that I had drafted regarding obtaining site access to the Nemacolin site for purposes of conducting due diligence. LTV/Jones & Laughlin Steel had agreed to provide access, and I was checking with CoBon if the letter would be sufficient for its purposes. Exhibit 319 is a true and correct copy of the letter I forwarded to CoBon. The pages bates numbered AA022387-388 in my journal (Exhibit 1005) are notes of the letter drafting.

g. On January 17, 1998, Mr. Visovsky and I received from Dennis Clarke of Land Reclamation a draft site use agreement, which provided the rights to a project site and to the coal fines reserve at the Nemacolin site. Exhibit 336 is a true and correct copy of Land Reclamation's January 17, 1998 correspondence to us. We provided comments to Mr. Clarke.

h. On January 22, 1998, Mr. Visovsky and I were copied on a Mr. Clarke's letter to LTV Steel enclosing the proposed Site Lease Agreement. Exhibit 341 is a true and correct copy of the correspondence.

i. On March 9, 1998, I received LTV Steel's March 6, 1998 draft proposed Site Use Agreement, which I forwarded to CoBon. Exhibit 376 is a true and correct copy of the March 6, 1998 letter that I forwarded to CoBon.

70. With the closing of project contracts and financing for the Consol Project in March

1998, CoBon did not further pursue, and Alpine/AGTC did not further work on, the Nemaquin Project and it did not result in the development of a synfuel facility. Instead, on April 1, 1998, CoBon, on behalf of Robena LLC, wrote to Stanley Sears proposing that the Consol Project purchase washed coal fines from the Nemaquin coal fines wash facility that Land Reclamation was pursuing, which Land Reclamation took to mean CoBon was not interested in pursuing development of a synfuel facility at the Nemaquin site. Exhibit 392 is a true and correct copy of CoBon's April 1, 1998 letter to Mr. Sears, and Exhibit 401 is a true and correct copy of Land Reclamation System's response.

6. Permitting For The Consol Project

71. Alpine/AGTC assisted and supported CoBon regarding permitting for the Consol Project. Based upon my review of the documents produced in the case and my recollection, Alpine/AGTC's work in this regard included the following activities and events:

a. On November 10, 1997, I was copied on a letter by Mr. Fischbach of Walter Heine & Associates to Consol that addressed permitting requirements for the Project. Exhibit 296 is a true and correct copy of Mr. Fischbach's November 10, 1997 correspondence that I received. As authorized by CoBon, I had contacted Walter Heine & Associates about working to obtain permits for CoBon for the Consol Project. We determined that an air quality permit would be the only new permit the Project would need to obtain.

b. I had numerous telephone calls with Walt Heine or Brian Fischbach of Walter Heine & Associates regarding the application for an air quality permit for the Project. The

pages bates numbered AA022345, AA022347, AA022352, AA022354, AA022356, AA022369, AA022373, AA022376 and AA022403 in my journal (Exhibit 1005) are notes of calls occurring on September 18, 24, October 9, 14, 17, November 6, 17, 20, 1997, and January 16, 1998.

c. On December 10, 1997, I was copied on Mr. Fischbach's letter to the PA DEP regarding deficiencies in the air quality permit application that Walter Heine & Associates had submitted to the PA DEP on behalf of CoBon for the Project. Exhibit 312 is a true and correct copy of the letter.

d. On January 15, 1998, I received from CoBon a permit status report regarding the Project. Exhibit 328 is a true and correct copy of the report that I received.

e. On February 12, 1998, I sent CoBon a copy of Consol's PA DEP mining permit for the Robena site. Exhibit 362 is a true and correct copy of my February 12, 1998 correspondence to CoBon.

f. On March 2, 1998, the PA DEP issued an air quality permit for the Project. The permit was issued in the name of CoBon Synfuel #2, LLC., which was CoBon's project company for the Project. Exhibit 373 is a true and correct copy of the PA DEP's permit approval.

g. On March 13, 1997, Walter Heine & Associates issued an Independent Engineer's Report regarding permitting for the Project. Exhibit 378 is a true and correct copy of the report.

h. On April 2, 1998, CoBon, on behalf of Robena LLC, wrote to Mr. Visovsky

and me asking Alpine/AGTC to assist CoBon in responding to a March 31, 1998 memorandum from Shagin & Anstine that sought information regarding environmental regulations compliance of the Project. Exhibit 395 is a true and correct copy of CoBon's April 2, 1998 letter to me and Mr. Visovsky. Shagin & Anstine were preparing a legal opinion for Providian regarding the sufficiency of the permits and regulatory approvals of the project. On April 3, 1998, Mr. Visovsky and I sent CoBon responses to the questions to which CoBon had asked Alpine/AGTC to respond. Exhibits 396 and 397 are true and correct copies of Mr. Visovsky's and my April 3, 1998 responses. CoBon sent to Mr. Visovsky a copy of CoBon's responses to Shagin & Anstine's memo.

7. Construction Of The Robena Synfuel Facility

72. Alpine/AGTC assisted and supported CoBon regarding the construction of the Robena Synfuel Facility. That facility was constructed under a pre-January 1, 1997 construction contract that CoBon had entered into with Lincoln Contractors, and was the only synfuel facility of which CoBon oversaw the construction. Based upon my review of the documents produced in this case and my recollection, Alpine/AGTC's work in this regard included the following actions and events:

- a. On March 12, 1998, CoBon, Mr. Visovsky and I met with Consol and Lincoln Contractors regarding construction of the synfuel facility of the Project. The page bates numbered AA022425 in my journal (Exhibit 1005) is a note of the meeting. I had introduced CoBon to Lincoln Contractors, which was located in Pennsylvania.
- b. On April 3, 1998, I received a construction status update from Mr.

Reddington. Exhibit 398 is a true and correct copy of the April 3, 1998 correspondence I received. I asked Mr. Reddington to supply Mr. Visovsky and me with a complete set of design drawings for us to review for any short term problems. Exhibit 399 is a true and correct copy of my request.

c. On April 15, 1998, CoBon, Mr. Visovsky and I met with Consol and Lincoln Contractors regarding review of the design of the synfuel facility, start-up, permits, operations and a walk-through of the construction site. The page bated numbered AA022434 in my journal (Exhibit 1005) is a note of the meeting. Exhibit 417 is a true and correct set of notes regarding the meeting produced by CoBon in this action.

d. On April 22, 1998, I visited the site and met with Mr. Filiaggi, whose company would be supplying coal fines to the Project from Pond No. 4 at the Robena site once the coal fines wash facility was in service. The page bated numbered AA022444 in my journal (Exhibit 1005) is a note of the site visit and meeting.

e. On April 27, 1998, Mr. Visovksy received from Mr. Reddington site plan drawings for the synfuel facility, asking for his review and comments. Exhibit 424 is a true and correct copy of Mr. Reddington's April 27, 1998 correspondence. Mr. Visovsky provided comments on the need for a sufficiently large enough space for storing feedstock, pending completion of the wash plant.

f. On May 4, 1998, Alpine/AGTC received an update of the engineering and construction status for the synfuel facility. Exhibit 428 is a true and correct copy of the document we received.

g. On May 6, 1998, I made a site visit to review the construction of the synfuel facility. The page bated numbered AA022452 in my journal (Exhibit 1005) is a note of the site visit.

h. On May 14, 1998, I met with Consol regarding start-up of the synfuel facility. The pages bated numbered AA022457-458 in my journal excerpts (Exhibit 1005) are notes of the meeting.

i. On May 20, 1998, I attended a meeting at the project site with CoBon, ICPE, Lincoln and Consol to review engineering and construction issues. The pages bated numbered AA022460-461 in my journal (Exhibit 1005) are notes of the meeting. Exhibit 439 is a true and correct copy of notes of the meeting, produced by CoBon in this action.

j. On May 27, 1998, I met with Consol at the construction site. The page bated numbered AA022463 in my journal (Exhibit 1005) is a note of the meeting.

k. On June 10, 1998, I made a site visit to review the completion of the construction effort. The page bated numbered AA022466 in my journal excerpts (Exhibit 1005) is a note of the site visit. Construction of the synfuel facility was completed on June 10, 1998.

l. On June 19, 20 and 21, 1998, I attended the start-up of the facility. The page bates numbered AA022468 in my journal (Exhibit 1005) is a note of that attendance.

8. Marketing Of Synfuel Facilities In General

73. Alpine/AGTC assisted and supported CoBon regrading marketing of synfuel facilities in general. Based upon the documents produced in this case and my recollection, Alpine/AGTC's

work in this regard included the following actions and events:

a. In October 1996, I had a telephone conference with Resource Means Funding regarding their interest in investing in synfuel projects.

b. On October 29, 1996, CoBon wrote to Ron Rink of Cobble Creek Estates regarding his interest in investing in synfuel projects, at my request. Exhibit 68 is a true and correct copy of CoBon's October 29, 1996 correspondence. I had learned of Mr. Rink from a business associate of mine, Elmer George. Mr. George had worked with Mr. Rink on several coal fines projects that Mr. George had attempted to finance. The page bates numbered AA023414 in my journal (Exhibit 1005) is a note of my October 22, 1996 call to Mr. Nash regarding Mr. Rink. I also discussed Resource Means Funding with Mr. Nash.

c. On February 3, 1997, CoBon sent to Alpine/AGTC, for our review and comments, a draft "Exclusive Financial Advisor Agreement" between CoBon and Coalco for retaining Coalco to locate tax-oriented investors for the synfuel projects that CoBon had put in place by the end of 1996 with our assistance. Exhibit 135 is a true and correct copy of CoBon's correspondence to us. Coalco was affiliated with Palmer Management Corporation ("Palmer"), which ended up as the operations manager for the Robena Synfuel Facility. CoBon proposed that it retain Coalco, as the only practical way CoBon was going to successfully market synfuel projects. CoBon did not notify Alpine/AGTC that Alpine/AGTC were breaching the Consulting Agreement as a result of CoBon having to retain Coalco, nor did CoBon ever communicate to Alpine/AGTC that Coalco was being retained to perform work that Alpine/AGTC was expected to perform under the Consulting

Agreement. Coalco ended up locating Providian as the investor/advisor for the Consol Project.

d. On February 5, 1997, Mr. Visovsky sent CoBon a “personal profile” to be included in descriptive memoranda of synfuel projects, to be used to market synfuel projects to tax-oriented investors. Exhibit 136 is a true and correct copy of Mr. Visovsky’s correspondence to Cobon.

e. On February 28, 1997, CoBon sent me a revised draft of the proposed “Exclusive Financial Advisor Agreement” between CoBon and Coalco, for my review and comments. Exhibit 138 is a true and correct copy of the first and second pages of the document sent to me by CoBon.

f. On March 7, 1997, Mr. Visovsky and I sent CoBon names of potential investors that Alpine/AGTC had contacted or were aware of that needed to be included in the proposed list in the “Financial Advisor Agreement” of potential investors as to which Coalco would not have a right to present to CoBon. Exhibits 142 and 143 are true and correct copies of our March 7, 1997 correspondences to CoBon.

g. On March 12, 1997, CoBon sent to me and Mr. Visovsky a revised draft “Financial Advisor Agreement” for our review and comments. Exhibit 145 is a true and correct copy of CoBon’s March 12, 1997 correspondence to us. On March 13, 1997, I had a telephone call with Steve Nash of CoBon regarding the draft and, even though I expressed Mr. Visovsky’s and my concerns that the contract would be expensive for CoBon, we gave our approval. Exhibit 146 is a true and correct copy of notes produced by CoBon regarding

that call. The notes state that “all agree” that the Coalco contract, although expensive, was a “necessary evil.”

h. On March 14, 1997, CoBon entered into the “Financial Advisor Agreement” with Coalco. Exhibit 148 is a true and correct copy of the agreement, provided by Cobon in this action.

i. In March 1997, I contacted Ron Carlson, an investment advisor, informing him that CoBon was looking to obtain financing for up to five synfuel projects, requiring \$4 million each. On March 17, 1997, Mr. Carlson responded by asking for more information. The lead was unfruitful as Mr. Carlson was a tax credit broker, and Section 29 tax credits could not be sold separately from the facility used to generate them. Exhibit 150 is a true and correct copy of a print-out of my e-mail communication with Mr. Carlson.

G. Performance Of The Synfuel Facilities

74. Covol has reported in its public disclosures that at least 24 synfuel facilities were developed by Covol and various developers, including CoBon, that used the Covol synfuel technology, including the six facilities of the Consol, Pace and PBS Projects. As reported by Covol, and as I was aware as a result of my experience with Robena Synfuel Facility and having attended Covol’s “Technical Summits,” the Covol synfuel technology initially did not produce a commercially acceptable agglomerated coal product, and these 24 synfuel facilities were not initially successful in producing commercial quality agglomerated synfuel in amounts coming close to the pro forma capacities the facilities had been licensed to produce. As reported by Covol and known to me based upon my experiences with the Robena Synfuel Facility and having attended Covol’s

“Technical Summits,” the most significant problems were that the synfuel would easily break apart and/or the production process would break down as a result of even slight variations in the size, coarseness, or moisture content of the coal fines feedstock being used in the productions. For example, when we first attempted to use the dryer of the Robena Synfuel Facility, which was intended to reduce the moisture content of the synfuel, the synfuel almost completely broke apart and turned to dust, which was blown out of the dryer. I attended the three “Technical Summits” that Covol held for the project owners, managers, and operators to address the production problems being encountered at the projects. Exhibit 574 is a true and correct copy of a October 13, 1998 letter from Brent Cook to Covol shareholders, which was posted on Covol’s website and produced by CoBon in this action, which identified the 24 synfuel facilities using the Covol synfuel technology and which addressed these production problems. Exhibit 596 is a true and correct copy of February 11, 1999 correspondence from me to CoBon enclosing a February 8, 1999 article in Coal Outlook Supplemental addressing the problems with facilities using Covol synfuel technology. Exhibit 621 is a true and correct copy of a March 17, 1999 letter from CoBon to Covol, a copy of which was provided to Alpine/AGTC, which stated, “The Covol binder has not been performing as originally represented by Covol or fairly anticipated by the parties. Our own experience [at the Consol Project] and your reports to us concerning the Pace Project bear this fact out.”

75. As reported by Covol and as known to me based upon reports I received from the PBS Project synfuel facility and from others knowledgeable about the synfuel industry, the synfuel facilities using the Covol synfuel technology started producing significant amounts of synfuel (up to and beyond their initial pro forma licensed capacities) and, as a result, started generating

significant and valuable Section 29 tax credits, only when modifications were made in the production processes that used the Covol synfuel technology. The first type of modification was to eliminate the final agglomeration step such that the synfuel was not an agglomerated product (the synfuel was not in briquette or pellet sized form). For example, in synfuel facilities using extruders to form pellets, the most common form of production, the dies in the extruders were removed, such that the product was not in pellet form, but still qualified as a synfuel. This change was made after it was realized that the IRS required a significant chemical change, rather than an agglomerated product, to qualify as a synfuel. The required significant chemical change was brought about primarily by application of the binder agent. The Covol proprietary binder agent came to be considered as a “chemical change” agent, rather than as a “binder” agent. The second type of modification was to use crushed mined coal, rather than waste coal fines. This eliminated the processing problems caused by using waste coal fines, and made the synfuel product more marketable. This change was made after it was realized that the IRS did not require the use of waste coal fines. These types of modifications were the subject of public criticism and IRS review, but the modifications were generally allowed by the IRS under an April 2001 revenue ruling regarding Section 29. Exhibit 935 is a true and correct copy of an April 23, 2001 Covol correspondence to CoBon, produced by CoBon in this action, which attaches what I understand to be this revenue ruling. Exhibit 891 is a true and correct copy of an excerpt of a Hill & Associates analysis of synfuel and synfuel projects, sent to me on August 30, 2000 by Mr. Phillips of PBS, which addressed these modifications and the resulting boom in synfuel production.

Project facility and from others knowledgeable about the synfuel industry, once these modifications were made to the production process, in 1999 and 2000, and synfuel users (mostly utilities) began accepting the non-agglomerated product, synfuel production and the resulting generation of Section 29 tax credits at the synfuel facilities that made the changes increased significantly, including at the PBS and Pace Projects synfuel facilities.

77. Based upon information and belief, these modifications were not made at the Robena Synfuel Facility until after that facility was under new ownership. Upon information and belief, Providian sold the Robena Synfuel Facility in or around August 2002. Exhibit 980 is a true and correct copy of a July 30, 2002 Asset Purchase Agreement relating to that sale, produced by Palmer in this action. The new investor/owner relocated that facility to a non-Consol site in West Virginia, and made the modifications to the Providian prices. Based upon documents produced by Palmer in this action, once these modifications were made at the Robena Synfuel Facility after its relocation, it had significant synfuel production and, as a result, generated significant Section 29 tax credits.

78. The synfuel facilities of these PBS, Pace and Consol Projects generated over \$1 billion of Section 29 tax credits for their investors/owners by the December 31, 2007 end of the Section 29 tax credit program.

H. The Proceeds CoBon Received Were Distributable Proceeds Under The Consulting Agreement

79. The “Contingent Payments” that Beta paid to Somerset, and a share of which CoBon received, described in paragraphs 1 through 12 of the Affidavit of Stephen R. Waldron, were what Mr. Visovsky and I understood to be proceeds for tax credits under the Consulting Agreement. They

were proceeds based upon the generation of Section 29 tax credits as they were calculated based upon the production of synfuel at a synfuel facility. They were part of the purchase price of a synfuel facility. They compensated the parties who participated in the sale of a synfuel facility with the equivalent of a percentage of the cash value of the tax credits that were made available to the purchaser. Moreover, they were called “Contingent Payments” as anticipated such payments would be called.

80. The “Earned Royalty Fees” that Central City paid, and which were received both directly and indirectly by CoBon, described in paragraphs 13 through 18 of Mr. Waldron’s Affidavit, were what Mr. Visovsky and I understood to be proceeds for tax credits under the Consulting Agreement. They were proceeds based upon the generation of Section 29 tax credits as they were calculated based upon the production of synfuel at a synfuel facility. They were part of the license fee for the Covol synfuel technology. They compensated the parties who participated in the licensing of a synfuel facility with the equivalent of a percentage of the cash value of the tax credits that were made available to the licensed taxpayer owner. Moreover, they were called “Earned Royalty Fees” as anticipated such payments would be called.

81. The “Initial Royalty,” described in paragraphs 19 through 21 in Mr. Waldron’s Affidavit, received from the PBS Synfuel Facility investor/owner was what Mr. Visovsky and I understood to be initial royalty fees under the Consulting Agreement. It was the fixed part of the license fee for the Covol synfuel technology that was based upon the licensed capacity of a synfuel facility. The \$1,462,500.00 “Initial Royalty” that Central City paid to CoBon was without any corresponding obligation on CoBon’s part to pay Covol any license fees under the September 10,

1996 License Agreement, and was profit to CoBon. As such, the “Initial Royalty” payment to CoBon was profits on initial royalty fees.

82. Covol’s proceeds from the PBS Synfuel Facility that were distributed to CoBon under the paragraph 4.b of the November 18, 1999 “Agreement,” described in paragraphs 22 through 25 of Mr. Waldron’s Affidavit, were what Mr. Visovsky and I understood to be binder fee proceeds under the Consulting Agreement as the proceeds were consideration for binder agent. CoBon did not incur any costs associated with the binder agent sales that generated the proceeds, because those sales were made by Covol. As such, the amounts distributed to CoBon were profits on binder fees.

83. The “Earned Royalties” that the owners of the Pace Synfuel Facilities paid, and 20 percent of which were owned by CoBon, described in paragraphs 26 through 33 of Mr. Waldron’s Affidavit, were what Mr. Visovsky and I understood to be proceeds for tax credits under the Consulting Agreement. They were proceeds based upon the generation of Section 29 tax credits as they were calculated based upon the Btu value of synfuel produced and sold by a synfuel facility. They were part of the license fee for the Covol synfuel technology. They compensated the parties who participated in the licensing of a synfuel facility with the equivalent of a percentage of the cash value of the tax credits that were made available to the taxpayer owner. Moreover, they were called “Earned Royalties” as anticipated such payments would be called.

84. The “Initial Royalties” paid to Covol, and \$227,715.00 of which was remitted to CoBon, described in paragraphs 34 through 36 of Mr. Waldron’s Affidavit, was what Mr. Visovsky and I understood to be initial royalty fees under the Consulting Agreement. They were the fixed part of the license fee paid for use of the Covol synfuel technology that was based upon the licensed

capacity of a synfuel facility. The \$227,715.00 was remitted to CoBon without any corresponding obligation by CoBon to pay any license fees under the September 10, 1996 License Agreement between Covol and CoBon. As such, the portion of the "Initial Royalties" remitted to CoBon was profits on initial royalty fees.

85. Covol's binder fee proceeds on which the profits were distributed to CoBon under paragraph 4.a of the November 18, 1999 "Agreement," described in paragraphs 37 through 40 of Mr. Waldron's Affidavit, were what Mr. Visovsky and I understood to be binder fees under the Consulting Agreements. The proceeds were consideration for binder agent. The November 18, 1999 "Agreement" (Exhibit 806) identified the distributions to CoBon as profits from fees for the sale of binder agent. Moreover, CoBon did not incur any costs associated with those sales, because those sales were made by Covol. As such, the amounts distributed to CoBon were profits on binder fees.

86. The "Note Payments," a share of which was received by CoBon, described in paragraphs 41 through 45 of Mr. Waldron's Affidavit, were what Mr. Visovsky and I understood to be proceeds for tax credits under the Consulting Agreement. They were proceeds based upon the generation of Section 29 tax credits as they were calculated based upon the value of the tax credits generated at a synfuel facility. They were part of the purchase price of a synfuel facility; and (c) they compensated the parties who participated in the sale of a synfuel facility with the equivalent of a percentage of the cash value of the tax credits that were made available to the purchaser.

87. Covol's proceeds from the Robena Synfuel Facility that it distributed to CoBon under paragraph 4.b of the November 18, 1999 "Agreement," described in paragraphs 46 through 49 of Mr. Waldron's Affidavit, were what Mr. Visovsky and I understood to be binder fees under the

Consulting Agreement as the proceeds were consideration for binder agent. CoBon did not incur any costs associated with the binder agent sales that generated the proceeds, because those sales were made by Covol. As such, the amounts distributed to CoBon were profits on binder fees.

I. CoBon Never Provided Notice Of A Breach

88. CoBon never notified Alpine that Alpine/AGTC had materially breached the Consulting Agreement.

89. CoBon never notified or otherwise informed AGTC that the synfuel facilities of either the Consol, Pace Project or PBS Projects had not been developed as contemplated by CoBon at the time the Consulting Agreement was entered into such that: (a) Alpine/AGTC had not performed their scope of work under the Consulting Agreement; or (b) any proceeds received by CoBon from those facilities were not a basis for paying Alpine/AGTC under the Consulting Agreement.

90. CoBon never notified or otherwise informed AGTC that any synfuel project that CoBon pursued or considered after August 20, 1996, or that any of Alpine/AGTC's work on any synfuel project between August 1996 and July 1, 1998, fell outside the Consulting Agreement for any reason.

J. CoBon's Affirmations Of Alpine/AGTC's Right To Be Paid

91. Exhibit 560 is a true and correct copy of a December 11, 1998 memorandum by me to CoBon regarding a draft pro forma for the PBS Project. I stated in memo: "Upon inspection of the pro forma it appears the project will operate with a loss at approximately \$12 per ton thus allowing for \$10 per ton in distributable tax credit profits. As a 20% equity partner CoBon therefore would be entitled to \$2 per ton for distribution among our six (6) members." My reference to 20

percent equity payments was to CoBon's 20 percent ownership of Double D Energy Association, the project company for the Project. My reference to "distribution among our (6) six members" was to Alpine, AGTC, Steve, Robert and Kelly Nash, and Anton Tonc. CoBon never communicated to me that my statement regarding "distribution among our six (6) members" was wrong or mistaken.

92. As discussed in above, CoBon wrote to Alpine in March 2001 asking me to garner PBS' support in getting PP&L to utilize Covol binder agent for the PBS Project synfuel facility's production in excess of 650,000 tons per year (Exhibit 929). In that letter, CoBon stated that the support was needed "so that the original team of developers benefit from this additional potential rather than some outside third party that has no investment in time and energy in the project." I understood that the "original team of developers" included Alpine/AGTC, as otherwise, Mr. Nash would not have been asking for my assistance and would not have been making that statement to support his position for garnering PBS' support.

93. On October 16, 1997, I had a telephone conversation with Steve Nash regarding the status of Pace Carbon Resources development of the Pace Project synfuel facilities. We discussed the Pace Project because of our mutual interest in receiving proceeds for tax credits from the Project. The page bates numbered AA022356 in my journal excerpts (Exhibit 1005) is a note of the call.

94. Sometime in 2001 as best as I can recall, I had a telephone conversation with Steve Nash of CoBon during which Mr. Nash informed me that the audit of the Pace Project by the IRS had concluded favorably for the Project, and that the funds that had been tied up as a result of the audit would soon be freed up for distribution to CoBon, such that Alpine/AGTC should expect to receive distributions.

K. CoBon's Affirmation Of Its Receipt Of Proceeds For Tax Credits Under The Consulting Agreement

95. CoBon started paying Alpine/AGTC under the Consulting Agreement in May 2000, and on August, November and December 2001. Mr. Visovsky and I did not consider that any of the payments that CoBon made to Alpine or AGTC, described in paragraphs 48 through 50 of Mr. Visovsky's Affidavit, were loans from CoBon. Steve Nash told me that CoBon treated the payments as expenses for federal tax reporting purposes.

96. In July 2002, Mr. Visovsky and I met with CoBon, represented by Steve and Robert Nash, to discuss what "Consulting Fees" were due to Alpine/AGTC at that time. Going into the meeting, Mr. Visovsky and I were aware that CoBon should have received 2002 first quarter proceeds for tax credits from the PBS Project, but knew that CoBon had not made distributions to Alpine/AGTC from those payments as CoBon had done through 2001. However, CoBon had not informed us prior to this meeting that there was a dispute or threatened litigation regarding compensation that Alpine/AGTC were owed under the Consulting Agreement, and we did not consider at that time that there was any dispute or threatened litigation regarding CoBon's obligation to pay Alpine/AGTC under the Consulting Agreement. Exhibit 975 is a true and correct copy of a June 17, 2002 AGTC letter to CoBon sent in anticipation of the meeting.

97. At the meeting, CoBon supplied Mr. Visovsky and me with a document titled "Contractual Entitlement in Accordance with Consulting Agreement Dated 12/05/96 and Allocation of CoBon License Agreement Capacity." Steve Nash told us that the document was CoBon's preliminary accounting of "Consulting Fees" it considered were then due to Alpine/AGTC, based

upon “tax credit payments” that had been received as of that time. Exhibit 977 is a true and correct copy of the document that we were given by CoBon at this meeting.

98. The first page of the document after the cover sheet was titled “Payments Due AGTC/Alpine Based on PBS Production.” That page listed CoBon’s “Earned Royalty Payments” and “Contingent Payments” from the PBS Project synfuel facility in 1999, 2000, and 2001 as included in the basis for “payments due AGTC/Alpine based on PBS/Somerset production.”

99. The second page behind the cover sheet was titled “AGTC/Alpine Earned Royalty & Contingent Payment Schedule from PBS/PP&L - 2002 Production.” That page included CoBon’s “Contingent Payments” and “Earned Royalty” payments from the PBS Project synfuel facility as a basis for calculating payments due to Alpine/AGTC under the Consulting Agreement.

100. The third page behind the cover sheet was titled “Consulting Agreement Distribution Summary,” and had a table titled “Summary of Payments Received By CoBon for Distribution to AGTC/Alpine.” In the “Summary of Payments Received By CoBon for Distribution to AGTC/Alpine,” CoBon listed “Earned Royalty” payments from the Pace Project synfuel facilities, “Contingent Payments” from the PBS Project, and “Earned Royalty” payments from the PBS Project synfuel facility.

101. Our discussion at the July 2002 meeting only addressed the amount of “Consulting Fees” that were then due to Alpine/AGTC under the Consulting Agreement. At that meeting, CoBon acknowledged its duty to pay Alpine/AGTC “Consulting Fees” under the Consulting Agreement. However, CoBon calculated the amount that it considered was then due in a manner that Alpine/AGTC considered was contrary to the Consulting Agreement. CoBon calculated the amount

of distributable proceeds for tax credits based upon only 1.5 million tons per year of licensed capacity divided between the three Projects that were developed. As such, CoBon calculated that the “Earned Royalties” and “Contingent Payments” from the PBS Project facility upon which Alpine/AGTC should be paid were less than all of the “Earned Royalties” and “Contingent Payments” received by CoBon from that facility. CoBon also subtracted from the proceeds distributable to Alpine/AGTC not only the \$700,000 set aside as expense reimbursement for CoBon under the Consulting Agreement (as to which Alpine/AGTC were not to share in), but also all of CoBon’s expenses and costs incurred in connection with its pursuit of synfuel projects, which CoBon itemized and identified as totaling \$523,064. Based upon these calculations, CoBon asserted that, as of July 2002, CoBon had over-paid Alpine/AGTC to that date based upon the “Earned Royalties” and “Contingent Payments” CoBon had received to that date. Mr. Visovsky and I expressed disappointment in CoBon’s calculations, but the detail of our response was limited, as we had not expected CoBon’s calculations.

102. Subsequent to our July 2002 meeting, the parties exchanged letters regarding their positions on what “Consulting Fees” were then owed. These communications ceased after CoBon’s November 10, 2002 letter to Alpine/AGTC. Exhibit 995 is a true and correct copy of CoBon’s November 10, 2002 letter. This letter was the first time CoBon communicated to Alpine/AGTC that CoBon claimed it had no duty to pay Alpine/AGTC under the Consulting Agreement. In this letter, CoBon stated “CoBon does not view the initial Consulting Agreement to be enforceable” and informed Alpine/AGTC that CoBon had filed a civil action against Alpine/AGTC and Mr. Visovsky, seeking to have the Consulting Agreement declared void as a result of an alleged change in the tax

law. CoBon did not claim in that letter, or in the attached complaint, that Alpine/AGTC had failed to perform or had breached the Consulting Agreement.

L. The July 1, 1998 Viron/Robena LLC Agreement And The Dispute Under This Agreement

103. On March 27, 1998, Alpine/AGTC, using the name “Viron Energy” or simply “Viron,” made a written offer of services to Robena LLC. Exhibit 390 is a true and correct copy of the offer of services, which I drafted for Viron. Viron was a combination of “Visovsky” and “Rodak,” and was a name for Alpine/AGTC acting together. Before CoBon’s and Alpine/AGTC’s negotiations that resulted from Viron’s March 27, 1998 offer of services, Robena LLC or CoBon had never referred to Alpine/AGTC as “Viron Energy” or “Viron.” CoBon and Robena LLC referred to Alpine/AGTC as “Viron Energy” or simply “Viron” only after the March 27, 1998 offer of services and only in connection with the negotiations that ensued from that offer and contract that resulted from the negotiations, described below. Viron made the offer to Robena LLC, because it was going to be the operating entity for the Robena Synfuel Facility, after its completion and then-pending sale to Providian. I directed Viron’s offer to both Rob Dulebohn of Providian, because Providian was going to own Robena LLC (through Robena LP), and to Steve Nash of CoBon, because CoBon was going to be the managing agent of Robena LLC (as the general partner of Robena LP).

104. Viron offered three services to Robena LLC on March 27, 1998 (Exhibit 390), all of which Mr. Visovsky and I considered to be outside Alpine/AGTC’s scope of work under the Consulting Agreement. One of the offered services was to secure a supply of processed coal fines

for post-startup operation of the Robena Synfuel Facility pending completion of the coal fines processing facility that was planned in connection with that synfuel facility. The Consol Project had been developed with a secured supply of in excess of 9 million tons of coal fines in place, which were the coal fines located in Ponds Nos. 4 and 6 at Consol's Robena site (as described in detail in Mr. Visovsky's Affidavit). In the ponds, these coal fines were in unprocessed, raw condition. In order to be used to produce a synfuel with a high enough Btu (energy) value and low enough ash (non-coal content) value that Consol would purchase under its obligation to the Consol Project to purchase synfuel, the coal fines in the ponds would have to be processed in a coal fines processing facility to increase their Btu value and decrease their ash value. The plan was to build a coal fines processing facility for that purpose. CoBon had planned to build the processing facility simultaneously with the Robena Synfuel Facility so that, from the start, the synfuel facility would be using processed coal fines originating from Ponds Nos. 4 and 6. However, Providian had withheld financing for design and construction of the coal fines processing facility until it received a favorable PLR for the Robena Synfuel Facility. This meant there was going to be a period of time after startup and pending the completion of coal fines processing facility when the Robena Synfuel Facility would need a supply of processed coal fines in order to produce synfuel that would meet Consol's specifications for purchasing synfuel. With its March 27, 1998 offer to Robena LLC (Exhibit 390), Viron offered to assist Robena LLC in securing this short term supply of processed coal fines.

105. As I explained in Viron's March 27, 1998 proposal (Exhibit 390), securing a short term supply of processed coal fines was beyond Alpine/AGTC's scope of work under the Consulting

Agreement. Alpine/AGTC's scope of work under the Consulting Agreement regarding coal fines was to assist CoBon in identifying, evaluating and securing "raw material" coal fines supplies so that a synfuel facility could be developed. Alpine/AGTC had done this regarding the Consol Project, by assisting CoBon in securing the approximately 9 million tons of coal fines in Ponds Nos. 4 and 6. The securing of the coal fines in Ponds Nos. 4 and 6 had enabled the Consol Project to be financed by Providian and had enabled the sale of the Consol Project to be scheduled for June 1998. Securing processed coal fines for after startup was not part of the development of the Robena Synfuel Facility, because processed coal fines were not needed in order for that facility to start operations before the Section 29 deadline of June 30, 1998 for placing synfuel facilities in operation. The Robena Synfuel Facility could use unprocessed coal fines to startup and begin producing synfuel so as to meet this June 30, 1998 deadline. Alpine/AGTC were available to secure startup coal fines, which could be done quickly from any number of readily available sources, include the Ponds Nos. 4 and 6. Instead, securing processed coal fines for after startup was part of the operation of the Robena Synfuel Facility, as it went to whether that synfuel facility would be able to produce synfuel that Consol would purchase (as opposed to synfuel with a lower Btu value and higher ash value that Robena LLC would have to sell to a third-party other than Consol).

106. As I explained in Viron's March 27, 1998 proposal, Viron's proposal was for a contract with Robena LLC that would be separate and independent of Alpine/AGTC's Consulting Agreement with CoBon. Viron's proposal was not for additional fees under the Consulting Agreement or to modify the Consulting Agreement in any manner, and it was not a statement that Alpine/AGTC were refusing to provide services under the Consulting Agreement. Viron proposed

a separate contract with Robena LLC, independent of the Consulting Agreement, because the offered services were outside of Alpine/AGTC's scope of services under the Consulting Agreement. The March 27, 1998 Viron proposal letter, addressed to Mr. Dulebohn and Mr. Steve Nash of Robena LLC (Exhibit 390) stated, in part regarding the offer of services to obtain short term processed coal fines:

As you are aware [Alpine/AGTC] herein after referred to as Viron Energy, are party to a December 5, 1996 Consulting Agreement with Robena project developer CoBon Energy, L.L.C. As per the agreement, Viron Energy shall devote such consulting time and resources as are reasonably required to assist and support CoBon in connection with the identification, evaluation and obtaining suitable raw material resources, the selection of suitable briquette facility site locations, the construction and management of an adequate briquette plant and operation, the negotiation and acquisition of coal product sales contracts, the securing of site permits and confirmation of regulatory compliance respecting all aspects of plant operations.

With regard to the Robena project, Viron has successfully performed the aforementioned duties to secure financing and construction commencement. There are however, anticipated services beyond the original scope of work. Firstly, raw material resources have been identified for the project, namely , Ponds No. 4 and 6 with over 9,000,0000 tons available. Since the preparation plant will not be concurrently constructed, the project is in need of securing a reliable supply of processed fines at the lowest possible cost capable of meeting the Consol specifications for purchase [of synfuel]. . . .

The purpose of this letter therefore is to identify several services required for the Robena project beyond the original scope of work of the CoBon Agreement and present a consulting agreement proposal capable of addressing the previously discussed needs. Viron hereby offers Robena L.L.C. its engineering and consulting services for \$20,000 per month flat fee plus expenses commencing on April 1, 1998 until July 31, 1998. Any services required beyond July 31, 1998 will be negotiated at that time.

107. Viron's March 27, 1998 proposal commenced what CoBon later represented to Palmer were "negotiations" between Viron and CoBon, which CoBon stated were "often hostile."

CoBon represented this in a March 15, 2000 letter, as the Robena LP general partner, to Palmer, a true and correct copy of which is at Exhibit 850, and which is described further below. As described in the following paragraphs, these negotiations led to Robena LLC retaining Viron in a July 1, 1998 letter retainer agreement (the "July 1, 1998 Viron/Robena LLC Agreement").

108. CoBon's first response, on behalf of Robena LLC, to Viron's March 27, 1998 proposal was to express confusion as to who Viron was and whether Viron was proposing brokering sales for the Robena Synfuel Facility. Exhibit 413 is a true and correct copy of Robena LLC's April 10, 1998 response to the proposal received by Alpine/AGTC, which was by Steve Nash of CoBon representing Robena LLC. CoBon, representing Robena LLC, took the position that obtaining short term processed coal fines for startup and operations pending completion of the processing facility was within Alpine/AGTC's scope of work under the Consulting Agreement and, thus, that CoBon expected Alpine/AGTC to continue to provide assistance to CoBon in that regard. However, Mr. Nash stated in the April 10, 1998 letter that he was willing to meet with Mr. Visovsky and me to further negotiate Viron's proposal on April 15, 1998, when he would be visiting the Robena Synfuel Facility site.

109. Mr. Visovsky and I met with Steve Nash on April 15, 1998 in Pennsylvania, and it was agreed that Viron would make a revised proposal for Robena LLC to retain Viron. It was agreed that the proposal would be for obtaining short term processed coal fines. Mr. Visovsky and I thought we made it clear that obtaining startup coal fines for the Robena Synfuel Facility was a separate matter, and we thought Mr. Nash was in agreement that Viron's revised proposal would have nothing to do with the fact that Alpine/AGTC would be available, without any other agreement, to obtain

startup coal fines in the event Viron did not obtain a separate agreement for obtaining processed coal fines or Viron was not able to secure processed coal fines for the startup. We agreed the synfuel facility would need 3,000 to 5,000 tons of startup coal fines and Mr. Visovsky was proceeding to obtain such a supply, which we hoped would be processed coal fines, without a separate agreement with Robena LLC. Exhibit 419 is a true and correct copy of Viron's revised proposal that referenced our meeting in Masontown, Pennsylvania, and Exhibit 431 is a true and correct copy of a May 12, 1998 letter I wrote to CoBon that also referenced this meeting

110. On April 16, 1998, I sent Viron's new proposal to CoBon (Exhibit 419). Viron proposed a monthly retainer fee of \$15,000, reduced from \$20,000.

111. CoBon responded to Viron's revised proposal with a letter dated May 8, 1998. Exhibit 429 is a true and correct copy of the May 8, 1998 CoBon letter, which was proposed as a letter of understanding for signature by Alpine/AGTC. In that letter, CoBon stated it would agree to having Robena LLC separately retain Viron for a monthly retainer fee of \$15,000. However, CoBon stated in this May 18, 1998 proposed letter of understanding that it was proceeding to do so only because Alpine/AGTC had refused to obtain both startup and short term processed coal fines without the separate agreement with Robena LLC and, thus were putting the Consol Project in "jeopardy" in its "twelfth hour," and were creating "economic hardship" for the Consol Project.

112. Mr. Visovsky and I signed the May 8, 1998 letter, apparently to indicate our agreement with CoBon's agreement that Robena LLC would retain Viron for a monthly retainer fee of \$15,000 and would arrange for such fee to be paid to Viron. However, on May 12, 1998, Alpine and AGTC each separately sent correspondences to CoBon, rejecting the May 8, 1998 proposed

letter of understanding and objecting to CoBon's statement that Alpine/AGTC were "jeopardizing" the Consol Project in its "twelfth hour," and were putting the Project in "economic duress." Exhibit 430 is a true and correct copy of AGTC's May 12, 1998 correspondence regarding CoBon's May 8, 1998 letter, and Exhibit 431 is a true and correct copy of Alpine's May 12, 1998 correspondence regarding CoBon's May 8, 1998 letter. We objected to CoBon's characterization of Viron's proposal for obtaining post-startup processed coals fines as a refusal to perform under the Consulting Agreement without getting paid the requested \$15,000 fee, as CoBon was continuing to link Viron's proposal to obtain processed coal fines to obtaining startup coal fines. Mr. Visovsky and I thought it had been agreed to at our April 15, 1998 meeting with Steve Nash that, independent from our negotiation of Viron's proposal to obtain processed coal fines, Alpine/AGTC were available to obtain startup coal fines, Mr. Visovsky was working to secure startup and initial operating coal fines supplies, and Alpine/AGTC would ensure that startup coal fines were available. AGTC's correspondence (Exhibit 430) referred to Mr. Visovsky's work to secure startup and initial operating coal fines supplies and stated in part:

The quick and easy response [to CoBon's May 8, 1998 proposal] is no. . . .

Your letter of May 8, 1998 seems hysterical in tone and content. It is beyond me how CoBon or any reasonable business person could consider the project in jeopardy at this time. Your construction is still on going an dat least 4 to 6 weeks from completion. Second, Robena has not taken any steps to receive these fines [which Mr. Visovsky was trying to obtain]. If you so desire, we will continue to try to make these arrangements at the best possible advantage to Robena. I believe your basic lack of understanding of this part of the business can be viewed as more detrimental tha[n] having fines in position on May 12, 1998. I also don't see Robena incurring any economic hardship at this time, please explain this statement in full or retract it in writing.

You also must understand, Robena has not taken steps to set up a budget to my knowledge for these initial purchases. For the initial 5000 tons, I need t know that \$100,000 to \$125,000 is available for payment and not subject to your whims. AGTC's reputation in this business is that it has never purchase a ton of coal it could not pay for. Therefore, I need Robena's full backing and understanding of this prior to making a purchase on Robena's behalf.

Alpine's May 12, 1998 correspondence (Exhibit 431), which I drafted, made clear that Alpine/AGTC were working to obtain startup coal fines independent of our negotiations for post-startup services to Robena LLC, and stated in part:

In receipt of your faxed correspondence dated May 8, 1998 and received yesterday, this letter response serves notice to CoBon Energy, L.L.C ("CoBon) that Alpine Coal Company (Alpine) denies your inferences, allegations and conclusions set forth therein.

Firstly under no circumstances is Alpine putting CoBon under duress or attempting to jeopardize the above referenced project at the twelfth hour as you allege. Contrarily to your statement, the matter of start up coal fines for the project has been discussed on numerous occasions following closing of the project, not the least of which was during our meeting last month in Masontown, Pennsylvania when resolve to this matter was thought to be settled. Now one month later, nothing has been settled and you are accusing Alpine of unethical business practices.

For the record, Alpine believes that within the scope of our November 1, 1996 Consulting Agreement and the circumstances known and represented to exist at the time of execution of the document, "raw materials" were defined in terms of waste fines either in a pond or a refuse pile which would be utilized in the project either in their existing condition or upgraded in quality through a supporting and coincident preparation plant. Only due to CoBon's tardiness in obtaining an investor and nature of CoBon's investor's reluctance to build a processing plant simultaneously with the agglomeration plant has this issue come to light.

Again, for the record, Alpine has not and will not put the issue of start up fines as an excuse for project failure. Alpine has, and will continue in our efforts, to secure the initial 3,000-5,000 tons of fines for start up of the agglomeration plant.

...

Finally, based upon our total outrage of the vexatious statements set forth

within this proposed letter agreement, Alpine herein serves notice of our unwillingness to execute such a document with CoBon.

113. In response to Alpine/AGTC's May 12, 1998 letters, CoBon agreed that it would send a revised proposed letter of understanding that would omit the claim that Alpine/AGTC were jeopardizing the Consol Project and putting it under "economic duress." CoBon's revised proposed letter of understanding, which omitted the claim that the Consol Project was in "jeopardy" in its "twelfth hour" and was under "economic duress," was dated May 18, 1998, and was signed and returned to CoBon by Alpine/AGTC on May 19, 1998. Exhibit 435 is a true and correct copy of the signed May 19, 1998 letter of understanding. The May 19, 1998 letter of understanding addressed finding suitable coal fines for startup and operation pending completion of the processing facility. The May 19, 1998 letter of understanding provided as follows, in relevant part:

Robena, L.L.C. ("Robena") will hereafter enter into a consulting agreement for Viron's reasonable and necessary assistance and consultation in identifying, evaluating and obtaining raw material resources suitable for the [Consol Project], including, without limitation, processed or other coal fines. Viron will be paid a consulting fee for its assistance in identifying, evaluating, and obtaining such raw material resources to be purchased by Robena or its assigns. Robena will pay Viron a consulting fee in the amount of \$3,750 per week commencing retroactively to May 1, 1998.

CoBon reserved its right to assert that Alpine/AGTC's services to obtain startup coal fines that Robena LLC would be contracting for fell under Alpine/AGTC's November 1, 1996 Consulting Agreement with CoBon. In this regard, the May 19, 1998 letter of understanding stated: "[CoBon] reserves its rights under CoBon's November 1, 1998 Consulting Agreement with AGTC, Inc. and Alpine Coal Company, Inc. regarding the scope of consulting services to be provided thereunder relative to the Project." However, as described below, CoBon never subsequently relied upon that

reservation of rights and, instead, repeatedly represented to Palmer and to Providian that all of Viron's services to Robena LLC had been provided under the July 1, 1998 Viron/Robena LLC Agreement.

114. Pursuant to the May 19, 1998 letter of understanding, Robena LLC retained Viron by the July 1, 1998 Viron/Robena LLC Agreement. Exhibit 479 is a true and correct copy of the July 1, 1998 Viron/Robena LLC Agreement. The July 1, 1998 Viron/Roben LLC Agreement was the only contract between Viron and Robena LLC. As CoBon later represented to Palmer, in a March 15, 2000 letter (Exhibit 850), the July 1, 1998 Viron/Robena LLC Agreement was entered into after the sale of the Consol Project to Providian had closed, which is when CoBon was no longer the developer of the Robena Synfuel Facility and instead, was the managing agent of Robena LLC responsible to Providian for operation of that synfuel facility. With the June 24, 1998 sale of the Consol Project to Providian, Robena LLC was operating entity for Robena Synfuel Facility, was by which it was conducting its business of producing synfuel. Robena LLC was wholly owned by Robena LP (which was 99.99 percent owned by Providian), and CoBon was the general partner of Robena LP and was responsible to Providian for managing Robena LLC, through its project company CoBon Synfuel No. 2, LLC. Mr. Visovsky and I understood that, with the sale, CoBon had changed roles from developer to the managing agent of the Robena Synfuel Facility, and Alpine/AGTC had changed roles from consultants to the developer to consultants to the operating synfuel facility. CoBon later, in its March 15, 2000 letter to Palmer (Exhibit 850), represented to Palmer that the July 1, 1998 Viron/Robena LLC Agreement had "superceded" the May 19, 1998 letter of understanding. The July 1, 1998 Viron/Robena LLC Agreement (Exhibit 479) provided in

relevant part:

This letter is a follow up to various prior communications with Viron Energy, L.L.C. (“Viron”) and specifically to confirm and establish a consulting agreement between Viron and Robena L.L.C. (“Robena”).

Robena hereby retains Viron’s reasonable and necessary assistance and consultation in identifying, evaluating, and obtaining raw material resources suitable for the Project and to be used during the time period prior to wash plant construction and operation, including without limitation, processed or other coal fines. Viron will be paid a consulting fee for its assistance in the identifying, evaluating, and obtaining such raw material resources to be purchased by Robena or its assigns. Robena will pay Viron a consulting fee in the amount of \$3,750 per week commencing retroactively to May 1, 1998. Viron will be responsible for all out-of-pocket and other expenses and any overhead incurred by Viron incident to Viron’s performance of the foregoing services. The consulting agreement will be terminable for cause by Robena upon thirty days written notice.

115. Robena LLC, while under the management of CoBon, regularly paid Viron the \$15,000 monthly retainer fee due under its July 1, 1998 retainer agreement with Viron until May 1999. As CoBon later represented to Palmer (as described below), the services that Viron provided to Robena LLC were expanded to include management oversight services.

116. Exhibit 546 is a true and correct copy of a November 19, 1998 correspondence, and Exhibit 593 is a true and correct copy of a February 9, 1999 correspondence, both regarding a draft Covol press release announcing the Consol Project’s receipt of a favorable PLR, with comments by CoBon, which were produced by CoBon in this action. In these documents, CoBon revised the press release to read, in part, that the Project “has been successfully marketing the synthetic fuel through Viron.”

117. Starting in late April 1999, Steve Nash of CoBon informed me that Providian stopped almost all of Robena LLC’s spending and required CoBon, as the general partner of Robena LP, to

obtain its approval for major Robena LLC expenses. Several vendors providing services to Robena LLC were not timely paid during the months of May through August 1999. One such vendor that was not paid was Viron, under the July 1, 1998 Viron/Robena LLC Agreement, even though Viron continued to procure coal fines supplies and provide management oversight services to Robena LLC during that time. Other Robena LLC vendors that were not paid during this time included ICPE, Steve and Robert Nash's engineering firm which was billing Robena LLC for management and engineering services, and Hill, Johnson & Schmutz, Kelly Nash's law firm which had billed Robena LLC for legal services.

118. In late May and early June 1999, Steve Nash informed Mr. Visovsky and me that Providian was considering replacing CoBon with Palmer as the managing agent of Robena LLC, and terminating the July 1, 1998 Viron/Robena LLC Agreement. CoBon, as general partner of Robena LP, opposed both retaining Palmer and terminating the July 1, 1998 Viron/Robena LLC Agreement.

119. Exhibit 686 is a true and correct copy of an excerpt of a June 3, 1999 correspondence from CoBon, as the general partner of Robena LP, to Rob Dulebohn of Providian, which CoBon produced in this action. With this letter, CoBon sent to Providian a document entitled "Viron's Work Efforts to Date & Value." Mr. Visovsky and I had initially drafted this document, which we provided to CoBon at its request to be provided to Providian at a June 3, 1999 meeting to review the status and performance of the Consol Project. According to a June 3, 1999 correspondence from Steve Nash to Kelly Nash, a true and correct copy of which was produced by CoBon in this action and is at Exhibit 685, CoBon created a document from our initial draft and sent the CoBon version of the document to Kelly Nash for his review. CoBon provided the document to Providian without

change by Kelly Nash. The document that CoBon sent to Providian (Exhibit 686) set forth two pages of bullet points addressing Alpine/AGTC's services and value to CoBon under the Consulting Agreement and to Robena LLC as Viron under the July 1, 1998 Viron/Robena LLC Agreement. In the document, CoBon stated that Viron had been "[i]nvolved in development of Robena Project since conception." Other points stated by CoBon in the document regarding Viron were: "Has 16 years experience working with Consol, including upper management contacts within Consol"; "Maintains a working relationship with and the support of Consol's Research and Development Department"; "Has a knowledge of reputable engineering/consulting firms and general contractors in the geographic area of the project"; "Provides 48 years of combined eastern coal experience in engineering, operations, regulatory compliance, and sales"; "Has 4 years experience working with Covol Technology and Section 29 projects"; and "Has developed and maintains an extensive marketing network for Robena product exclusive of Consol."

120. Exhibits 687 and 689 are true and correct copies of sets of notes, produced by CoBon in this action, taken at or regarding a June 3, 1999 meeting identified as being "Performance Review Meeting" between Providian and CoBon that addressed Providian's intentions and directions at that time. One set of these notes by CoBon, Exhibit 689, stated "Viron Energy - [Rick - Mark] - [Dulebohn] appears to want to get rid of the contract – big mistake."

121. Exhibit 712 is a true and correct copy of a June 25, 1999 letter from CoBon, as the general partner of Robena LP, to Providian that addressed Providian's proposal to have Robena LLC retain Palmer and to terminate the July 1, 1998 Viron/Robena LLC Agreement. In that letter, CoBon stated:

Business and working relationships have been painstakingly developed over the course of the past twelve months with Consol management, union operating personnel, MSHA, Pond Reclamation management, local vendors, etc. Consol's trust, confidence and respect have been hard earned given the very difficult manufacturing environment posed by the Project. Viron's role as a consultant and liaison to Consol was critical to the Project's startup and continues to be vital link in the chain. . . .

At a meeting held on June 11, 1999 with Consol, the possibility of replacing the current management (and consultants) with Palmer was conceptually and briefly discussed. Consol's reaction was one of complete surprise and strong, vocal opposition. Consol indicated such a change would result in the immediate issuance of a 90 day notice to terminate the Lease Agreement. Consol reiterated that a central condition for Consol's support for the development and operation of the Project was its relationship with [CoBon] (specifically Viron's representatives [Visovsky and Rodak]) and its understanding that these parties would stay actively involved for the life of the Project

The "business and working relationships" CoBon referred to were Viron's relationships because, as far as I knew, CoBon had no relationship, other than through me and Mr. Visovsky, with Consol, MSHA, Pond Reclamation, or local vendors. In its June 25, 1999 letter, CoBon argued against termination of the July 1, 1998 Viron/Robena LLC Agreement, on the basis, in part, that Viron's continued assistance would be critical to Robena LLC obtaining Consol's agreement to revised project contracts for the Consol Project, which were needed in order to make the project contracts comply with the favorable PLR that Providian had obtained. CoBon stated:

A change in management at this early stage of the Project, perceived or otherwise, could be fatal to the Project. . . .

[CoBon] believes that Consol's willingness to modify the [project agreements] will depend upon the strong relationship that exists between Viron and Consol. [CoBon] believes the removal or replacement of Viron may result in Consol being unwilling to modify the [project agreements] thus precluding the Project from meeting the PLR requirements. . . .

[CoBon] believes that removing or replacing its consultants (particularly Viron) will result in a significant set back in the Project's union relations.

In this June 25, 1999 letter, CoBon proposed several options that Providian could pursue. As one option, "Option 2," CoBon proposed that: "The Partnership can remove [CoBon] as the general partner and substitute Palmer, Viron or another suitable candidate as general partner." CoBon had sent a draft of this letter to Mr. Visovsky and me for our review and comments prior to sending it to Providian.

122. Exhibit 713 is a true and correct copy of a July 1, 1999 letter from CoBon, as the general partner of Robena LP, to Gordon Deane of Palmer, regarding, in part, Alpine/AGTC's history with the Consol Project and the services Alpine/AGTC had provided to CoBon under the Consulting Agreement and to Robena LLC as Viron under the July 1, 1998 Viron/Robena LLC Agreement. In this letter, CoBon stated that Robena LLC had contracted with Viron on July 1, 1998 "[i]n order to maintain a local presence at the Project with the superintendent, the operators, the Owner Representative, as well as to acquire raw material coal fines, sell pellets produced, etc. . . ." CoBon stated, "The services provided to date by Viron include, but are not limited to, the following:" and proceeded to list 20 bullet items, which were largely copied from the "Viron's Work Efforts to Date & Value" document that CoBon had sent to Providian on June 3, 1999. In its July 1, 1999 letter to Palmer, CoBon also stated: "Viron, on behalf of [CoBon], has developed a good working relationship with Consol's Robena management, which is believed to be essential to the success of the Project" and Viron had "[c]ontinuous involvement in the development of the Project since its conception." In that letter, CoBon also stated, "It should be noted that Consol agreed to let

the Project be developed only after the following six stipulations were agreed to by Viron,” which stipulations included “Viron must be involved with the Project on a long term basis to interact with Consol” and “The project must gain control of Pond No. 4 from Pond Reclamation and assist in settling the dispute between Consol and Pond Reclamation.” Alpine/AGTC had gained control of Pond No. 4 and had assisted in settling the dispute between Consol and Pond Reclamation.

123. On July 1, 1998, as directed by Providian, Robena LLC, Robena LP and CoBon, as the general partner of Robena LP, retained Palmer to be the managing agent of Robena LLC. Exhibit 736 is a true and correct copy of the “Management Agreement,” dated July 1, 1999, by which Palmer was retained. CoBon, through CoBon Synfuel No. 2, continued to be the general partner of Robena LP over Robena LLC, but Palmer became Robena LLC’s managing agent, responsible for managing Robena LLC’s operations, developments, contracts and books. Included in Palmer’s responsibilities was managing the July 1, 1998 Viron/Robena LLC Agreement. As Steve Nash of CoBon informed us, upon and after Robena LLC’s retention of Palmer, Viron had to look to Palmer to get paid under the July 1, 1998 Viron/Palmer Agreement. I requested CoBon’s assistance, as general partner of Robena LP, in getting Palmer to agree that Robena LLC would pay Viron (which assistance CoBon did provide as described in the following paragraphs). However, Steve Nash informed Mr. Visovsky and me that only Palmer had the authority to decide what vendors Robena LLC would pay and how much they would be paid.

124. Throughout the summer of 1999, CoBon, as the general partner of Robena LP, submitted to Providian for approval and payment the invoices of the vendors who were not being paid, including Viron’s invoices under the July 1, 1998 Viron/Robena LLC Agreement, ICPE

invoices, and Hill, Johnson & Schmutz invoices. Exhibits 654, 696, 703, 731 and 738 are true and correct copies of CoBon's correspondences to Providian in this regard, all produced by CoBon in this action. On July 29, 1999, CoBon, as the general partner of Robena LP, wrote to Providian that Viron, along ICPE and Hill, Johnson & Schmutz, "have continued in good faith to provide services to the Project so as to not interrupt operations" despite not getting paid. However, CoBon's action did not result in Viron (or ICPE and Hill, Johnson & Schmutz) getting paid.

125. Exhibit 758 is a true and correct copy of an August 26, 1999 letter from CoBon, as the general partner of Robena LP, to Palmer, produced by CoBon in this action, which shows a copy to me. In this letter, CoBon directed Palmer to pay several outstanding invoices, including \$60,000 in outstanding monthly fees owed to Viron under the July 1, 1998 Viron/Robena LLC Agreement, and fees owed to ICPE and Hill, Johnson & Schmutz. CoBon stated in the letter that each of the vendors, including Viron, "has provided the services contracted for and has continued in good faith to provide the services request in order to not interrupt operation or ongoing construction." However, CoBon's action did not result in Viron (or ICPE and Hill, Johnson & Schmutz) getting paid.

126. In late August 1999, on behalf of Viron, I corresponded with Gordon Deane of Palmer regarding Viron getting paid under the July 1, 1998 Viron/Robena LLC Agreement. On August 27, 1999 Palmer sent a proposal to Viron for bringing Viron "current," as well as proposals to ICPE and Hill, Johnson & Schmutz. Exhibit 759 is a true and correct copy of Palmer's August 27, 1999 proposal to Viron. Exhibit 760 is a true and correct copy of an August 27, 1999 Palmer correspondence to Providian, produced by CoBon in this action, that attaches Palmer's proposal to

ICPE. On August 28, 1999, I responded to Palmer's August 27, 1999 letter on behalf of Viron. Exhibit 761 is a true and correct copy of my response. Exhibit 762 is a true and correct copy of an August 30, 1999, correspondence from Steve Nash of CoBon on Robena LLC letterhead, to Gordon Deane, produced by CoBon in this action. In that correspondence, Steve Nash of CoBon, as the general partner of Robena LP, stated:

Gordon – I received copies of your letters to ICPE, Hill, Johnson & Schmutz and Viron Energy. While I am disturbed at the inference of impropriety in each of the letters, I am particularly concerned at the gross misstatements contained in your letter to ICPE concerning the respective duties and responsibilities of the parties (i.e. the roles of ICPE and GETS).

127. After Robena LLC, under Palmer's management, failed to pay Viron four months of fees owed under the July 1, 1998 Viron/Robena LLC Agreement, despite Viron having continued to provide services to Robena LLC in May through August 1999, on September 1, 1998, I provided notice to Robena LLC, on behalf of Viron, that Viron had terminated its services to Robena LLC and demanded payment of the \$60,000 owed under the July 1 1998 Viron/Robena LLC Agreement. I sent the notice and demand to CoBon as the general partner of Robena LP. Exhibit 764 is a true and correct copy of Viron's September 1, 1999 notice, and Exhibit 763 is a true and correct copy of Viron's September 1, 1999 demand.

128. Exhibit 765 is a true and correct copy of a September 1, 1999 letter from CoBon, as the general partner of Robena LP, to Palmer, produced by CoBon in this action. In this letter, CoBon stated that Viron's September 1, 1999 notice of termination of services "is a crisis in [CoBon's] opinion which must be resolved immediately." CoBon also stated:

On numerous occasions in the past several months, [CoBon] has expressly advised

[Palmer] and [Providian] of the critical role Viron plays with Consol and Pond Reclamation with respect to the Robena Project. . . .

While [CoBon] is not critical of Palmer's desire to renegotiate with Viron on a go-forward basis, Palmer's payment delays and attempts to renegotiate for past services that have clearly been performed and approved by the General Partner [CoBon], and which are now seriously past due, have placed the success of the Robena Project in jeopardy. The termination of Viron is totally unacceptable. Palmer's delays in causing payments to be made for past services, despite the payment directives of [Cobon], appear to have now backfired. The apparent breakdown in managing Viron, a sensitive relationship underlying the Project, is a serious concern to [CoBon].

[CoBon] would reiterate its directive that Palmer make immediate payment for all past and outstanding invoices and take steps to immediately place Viron under contract on a go-forward basis to ensure the stability and future success of the Project."

129. In September through November 10, 1999, Mr. Visovsky and I, on behalf of Viron, negotiated with Palmer to get Viron paid under the July 1, 1998 Viron/Robena LLC Agreement. During this time, Viron did not negotiate with CoBon, and we did not consider that we were negotiating for payment under the Consulting Agreement. The two issues Viron was negotiating with Palmer were: (a) getting paid for Viron's May through August 1999 services under the July 1, 1998 Viron/Robena LLC Agreement; and (b) whether, and under what terms, Viron would continue to provide services to Robena LLC in the future. Exhibits 765, 767, 775, 783, 789 and 900 are true and correct copies of correspondences from Palmer to Viron during this time period regarding the negotiations. Exhibit 768, 781, 785, 788, 792, 785 and 801 are true and correct copies of Viron correspondences to Palmer regarding our negotiations. During this time, Palmer never took the position that Viron did not have a right to get paid for its May through August 1999 services to Robena LLC because the services fell under the Consulting Agreement. During this time, CoBon

never communicated to Viron that it was CoBon's position that Viron should not get paid for its May through August 1999 services to Robena LLC because the services fall under the Consulting Agreement.

130. Exhibit 799 is a true and correct copy of a November 5, 1999 letter from CoBon, as the general partner of Robena LP, to Palmer. In that letter, CoBon stated as follows:

As you know [CoBon] has historically relied upon Rick Visovsky and Mark Rodak (collectively 'Viron') relating to business and public relations issues directly involving Consol. Their input regarding the required contract modifications and their assistance in negotiating contractual provisions with Consol have been critical to the project from its inception.

CoBon stated in the letter that, without Viron's assistance, CoBon was unable to provide comments to proposed revised project contracts for the Consol Project. CoBon stated: "Obviously, Viron's inability to provide business advice and assistance to [CoBon] effectively precludes [CoBon's] ability to furnish Palmer a complete response concerning the proposed amendments."

131. On November 10, 1999, Viron again made a demand for payment to Robena LLC, which was directed at CoBon, acting as the general partner of Robena LP, because Viron's negotiations with Palmer had broken down. Exhibit 802 is a true and correct copy of Viron's demand.

132. On November 24, 1999, I caused Viron to file a civil action in Cumberland County, Pennsylvania against Robena LLC, Civil Action No. 1999-7141 (the "Pennsylvania Action"), seeking to get paid the \$60,000 in fees that Viron had not been paid between May and August 1999 under the July 1, 1998 Viron/Robena LLC Agreement. Exhibit 812 is a true and correct copy of the complaint initiating the Pennsylvania Action. The only parties to the Pennsylvania Action were

Viron and Robena LLC. The complaint in the Pennsylvania Action was not against CoBon and did not mention or refer to the Consulting Agreement. I prepared the complaint initiating the Pennsylvania Action without assistance of counsel, and attached to that complaint the wrong document as being Viron's agreement with Robena LLC, as demonstrated by the fact that the document I attached was not an agreement between Viron and Robena LLC, but was the May 8, 1998 letter of understanding between Alpine/AGTC and CoBon to which Alpine/AGTC had objected and which had been replaced by the May 19, 1999 letter of understanding.

133. In December 1999, Robena LLC filed a "Preliminary Objection to Plaintiff's Complaint" in the Pennsylvania Action, which was served on me (and only me). This Objection was based upon the fact that I had attached the wrong document to the complaint as the subject agreement between Viron and Robena LLC. Exhibit 831A is a true and correct copy of Robena LLC's December 20, 1999 Objection.

134. Exhibit 844 is a true and correct copy of a February 16, 2000 CoBon letter to Providian, a copy of which was sent to Viron. In this letter, CoBon, as the general partner of Robena LP, addressed: (a) CoBon not being copied on Palmer's letters; (b) ICPE not being paid by Robena LLC; (c) the need to revise the project contracts with Consol in order to comply with the PLR; (d) continued poor production at the Robena Synfuel Facility under Palmer's management; and (e) CoBon's only nominal position as general partner over Robena LLC. With regard to the third subject (obtaining project contract revisions from Consol), CoBon wrote:

As the General Partner has repeatedly advised and directed, resolution of the Viron contract and utilization of its services will provide the best possibility for acquiring the necessary changes to the Consol documents to be in compliance with the PLR.

[CoBon] has attempted to delay Viron from pursuing legal action as long as possible, but at this point in time, I have run out of excuses and explanations on behalf of the Partnership.

Regarding the fourth subject (continued poor production), CoBon stated:

In regard to pellet plant production, since Palmer took over management responsibility for the Robena project, we have seen only nominal increase in plant production and pellet quality remains the same. Considering the fact that prior to the management change, the project operated without a reliable source of coal fines, and had recently negotiated two reliable sources of coal fines from Consol and Mather, as a result of the work efforts of [CoBon] and Viron, the partnership anticipated a significant improvement in plant production and operations and consistent pellet quality. Unfortunately, while costs have decreased, the hoped for improvements have not been realized to date.

Regarding the fifth subject (CoBon's only nominal position as general partner), CoBon stated:

Candidly, [CoBon] is growing weary of the apparent charade in which [CoBon] is the General Partner, when in reality, Providian exercises management control and is performing the role of the general partner, with Palmer as its manager. Palmer continues to demonstrate no willingness to provide any significant accountability to the General Partner.

135. In February 2000, Mr. Visovsky and I on behalf of Viron negotiated with Palmer to resolve the Pennsylvania Action. During that time, Viron proposed that it get paid the \$60,000 already owed, and that Robena LLC pay Viron an additional \$100,000 for future services under a modified contract with Robena LLC. Exhibits 843, 845 and 846 are true and correct copies of correspondences between Viron and Palmer in this regard. Viron did not negotiate with CoBon to resolve the Pennsylvania Action, and during our negotiations with Palmer, neither Mr. Visovsky nor I considered we were negotiating for payment under the Consulting Agreement. During these negotiations, Palmer never took the position that Viron did not have a right to get paid for its May through August 1999 services to Robena LLC because the services fell under the Consulting

Agreement. During these negotiations, CoBon never communicated to Viron that it was CoBon's position that Viron should not get paid for its May through August 1999 services to Robena LLC because the services fell under the Consulting Agreement.

136. Exhibit 849 is a true and correct copy of a March 15, 2000 letter from CoBon, as the general partner of Robena LP, to Robena LLC's counsel, Jeffrey Bernstein, produced by CoBon in this action. CoBon stated that the letter was with regard to "Viron Energy v. Robena L.L.C., Civil Action No. 1999-7141." In that letter, CoBon stated:

This letter is in regard to your letters to [CoBon] dated 12/23/99 and 3/6/2000. These letters appear to relate to the ongoing litigation between Viron Energy, LLC ("Viron") and Robena, LLC ("Robena"). As you may be aware, Palmer Management Corporation ("Palmer") is under contract to [CoBon], the general partner of Robena, LP, to assist the general partner in providing management services for the partner. Among its duties to [CoBon], Palmer is managing this litigation. [CoBon] has been given no direction from Palmer regarding and is unaware of your specific involvement in the referenced proceedings.

137. Exhibit 850 is a true and correct copy of a March 15, 2000 letter from CoBon to Palmer, produced by CoBon in this action. CoBon, as the general partner of Robena LP, stated that the letter was with regard to "Viron Energy v. Robena L.L.C., Civil Action No. 1999-7141." CoBon stated in the letter:

This letter is in regard to letters sent to [CoBon] dated 12/23/99 and 3/6/2000 from Jeffrey M. Bernstein, Esq. Specifically, these letters concern the ongoing litigation between Viron Energy, LLC ("Viron") and Robena, LLC ("Robena"). [CoBon] is communicating directly with Palmer Management Corporation ("Palmer"), rather than with Mr. Bernstein, inasmuch as Palmer is managing this litigation and [CoBon] has no relationship with Mr. Bernstein.

In this letter, at Palmer's request, CoBon addressed its position regarding Viron's demand for \$100,000 payment, in addition to payment of the \$60,000 that was due and owing, stating:

Palmer should be prepared to pay Viron up to the full amount requested given the importance of resolving these issues. Given Viron's obvious political influence with Consol, [CoBon] firmly believes Viron should be involved in the long term plans to maximize the likelihood of success for this project.

138. In its March 15, 2000 letter to Palmer (Exhibit 850), CoBon also addressed its position regarding the fact that Alpine/AGTC had not been paid, and CoBon's need to gather documents to support Robena LLC's case against Viron. CoBon stated:

This process has been frustrating and time consuming to say the least, particularly in view of [CoBon's] belief that the moneys sued for essentially have been and remain fairly due and payable. Other than Palmer's vague reference to the as yet unmodified agreements relating to the PLR . . . [CoBon] has still not been furnished with any reliable factual basis for the non-payment.

139. In its March 15, 2000 letter to Palmer (Exhibit 850), CoBon also responded to Mr. Bernstein's December 23, 1999 requests for information regarding the Viron civil action against Robena LLC. Mr. Bernstein had requested the following items of information in a December 23, 1999 letter to CoBon, among others:

Item # 1: "A summary of all verbal communications with Viron Energy ('Viron') with respect to any actual or potential contractual arrangements between Robena LLC ('Robena') and Viron and a copy of all documents pertaining to the same."

Item #2: "A summary of all verbal communications with [Viron] with respect to any services rendered by Viron on Robena's behalf and a copy of all documents pertaining to same."

Items #4: "Any progress reports furnished by Viron or other evidence of work performed by Viron in connection with Robena's project."

Item #6: "A summary of all verbal communications with Viron regarding demands for payment, the reasonableness of the fees charged by Viron and the value of the same, and a copy of all documents pertaining to same."

Exhibit 832 is a true and correct copy of a December 23, 1999 Bernstein, Cushner & Kimmell letter

to CoBon, produced by CoBon in this action, that makes these requests. In its March 15, 2000 letter to Palmer, CoBon responded to these requests as follows:

Synfuel has also prepared the following brief responses to the questions raised in Mr. Bernstein's December letter, based in part upon Synfuel's review of the subject documents. Obviously, trying to summarize "all verbal communications" is not practical as Synfuel and Viron personnel had regular ongoing communications concerning all aspects of the project during the time Synfuel provided management services. This fact is reflected in the documents to a large extent. Moreover, obtaining detailed information from Messrs. S. Reddington, R. Nash and other ICPE contract personnel involved at the time has been difficult as ICPE has still not been paid for its past services and none of these people are employed by Synfuel. Assuming the matter is not settled, deposition testimony may be necessary to tie down any details that may be required.

Item #1 - Robena's contractual arrangement with Viron consisted of a Letter of Understanding dated 5/19/98 between CoBon Energy, LLC ("CoBon") (the pre-closing project developer) and Viron. This Letter of Understanding was superceded immediately after the project closing by a Consulting Agreement letter dated 7/1/98 between Robena and Viron. Copies of both documents are enclosed. These documents were the result of rather extensive and at times hostile negotiations between Viron and CoBon/Robena representatives.

Item #2 - As set forth in the letter agreement, the services originally contracted for from Viron included the identification, evaluation and obtaining of a suitable raw material supply of coal fines to be utilized during the startup phase and until the wash plant is constructed and operating. Though not referenced in the letter specifically, Viron was also responsible for arranging for and coordinating sales of all coal pellets produced, for attending all coordination meetings at Consol and interfacing with Consol management, and for coordinating trucking for coal fines to the site, for coal pellets from the site and for stockpiling and inventory management at the site.

The foregoing scope of services was later refined to also include interceding and assisting as required to resolve union labor issues, assisting with permit compliance and obtaining new permits as required for operation of the wash plant, assisting with PLR issues, meeting with operations personnel to identify and address operations problems, and arranging for all raw material coal fines and final product coal pellet testing. A more detailed listing of the services actually provided by Viron was included in the letter to Palmer dated July 1, 1999. Synfuel understood that

Palmer would continue to utilize Viron in this capacity after it assumed management responsibilities.

The various services and the manner and success whereby Viron provided such were the subject of ongoing dialogue between the parties. Many of the services were provided to address specific and unforeseeable problems encountered during the initial year of plant operations. While Viron at times sought additional payments for its services and while the scope of services provided was considerably expanded from that initially contemplated, the monthly fee was never increased by Synfuel. .

..

Item #4 - Copies of all progress reports furnished to Robena are included in the documents enclosed. Written reports were received in most cases on a monthly basis, although it should be noted that during some months, written reports were not prepared. Telephone conversations and conferences were held on a regular basis, often several times per week to discuss project operations and issues status, raw material supply status, coal pellet sales status, union issues, equipment issues, personnel issues, permitting issues, proposed changes to operations procedures, etc. related to the ongoing project. Regular site visits were completed, samples were drawn and photographs were taken of progress from time to time by Viron and/or relating to the project. The parties' communications involved various representatives of Synfuel and Viron, including, S. Reddington, R. Nash, S. Nash, M. Rodak, R. Visovsky, counsel, as well as Consol personnel and other vendors, often depending upon the particular issues under consideration at any given time. . . .

Item # 6 - Viron invoiced Robena on a monthly basis. Copies of all invoices are enclosed. A monthly fee of \$15,000 was established for the services of both Mark Rodak and Rick Visovsky on behalf of Viron as required for professional consulting up to a full time commitment, if necessary, to satisfy project requirements. Viron functioned as coal experts in all aspects of the project and were integral to the development and operations of the project because of their experience and industry relations. This fee also covered all expenses. Considering the fact that both individuals were onsite at least two to three days every week, and often worked on weeknights and weekends, expenses possibly account for \$3,000 to \$4,000 of this monthly retainer, leaving a balance of \$11,000 to \$12,000 for salary. At a 50% commitment, this is equivalent to \$69.00/hr and at a 100% commitment, this is equivalent to \$35.00/hr. Considering that this cost included all overhead and other burdens, this level of monthly retainer was believed to be reasonable for the services to be provided.

functioned as coal experts in all aspects of the [Consol] project and were integral to the development and operations of the project because of their experience and industry relations.”

141. Exhibit 851 is a true and correct copy of a March 17, 2000 letter from CoBon, as the general partner of Robena LP, to Palmer. In that letter, CoBon stated:

Regarding [CoBon’s] recommendation on the Viron proposal [for \$60,000 plus \$100,00 for a future contract], please refer to the [CoBon] letter dated March 15, 2000 (Re: Viron Energy v. Robena, LLC). In an attempt to put the Robena project in perspective, please consider the following. Consol produces and sells approximately 70 million tons of coal per year. Under ideal circumstances, Robena could produce up to 600,000 tons of coal pellets per year. This amount represents less than one percent (.086%) of the overall Consol production. From this perspective, it is obvious that the Robena project is a relatively insignificant dot on Consol’s radar screen. The primary reason that [the Consol] project was allowed to be constructed on a Consol site and that Consol has been willing to pursue this engagement was the long term relationship that existed between Rick Visovsky and Consol upper management. [CoBon] will reiterate that an agreement between Palmer and Viron [resolving Viron’s civil action] is believed to be critical to the long term success of the project. Palmer’s inability to date to acquire the necessary changes to the Consol agreements for compliance upon the PLR evidences the fact that employing the political influences of Viron may well be the only way Robena will successfully acquire the contractual changes.

(Emphasis in original). In this March 17, 2000 letter, CoBon also stated that

. . . the Viron termination and subsequent complaint also represent a huge loss of a valuable resource which, if not resolved soon, could be lost forever with little or no hope for any political influence to acquire the necessary changes to the Consol agreement for conformance with the [private letter ruling], thus making the [private letter ruling] issued of no value.

142. In June 2000, Viron and Robena LLC entered into a Settlement Agreement that resolved the Pennsylvania Action, which I signed on behalf of Viron on June 28, 2000. Exhibit 880 is a true and correct copy of this Settlement Agreement. CoBon, as the general partner of Robena LLC, signed the Settlement Agreement on behalf of Robena LLC. No depositions had been taken

in the Pennsylvania Action, no documents had been produced in that Action, and no motions were filed in that Action. CoBon was not involved in the settlement discussions. Palmer, not CoBon, presented the proposed Settlement Agreement to Viron. Palmer represented that the Settlement Agreement would resolve the dispute between Robena LLC and Viron regarding the July 1, 1998 Viron/Robena LLC Agreement, and that the execution of the Agreement was a condition to Viron getting paid the \$60,000 it was owed under that retainer agreement. One of the terms of the Settlement Agreement was that Viron would be paid \$60,000, which was the amount Viron claimed was due and owing under the July 1, 1998 Viron/Robena LLC Agreement. Viron was not paid any other sum under the Settlement Agreement. We were informed that Palmer agreed to the settlement on behalf of Robena LLC because Steve Nash of CoBon told Palmer he was going to testify that Viron had performed, and were owed the \$60,000, under The July 1, 1998 Viron/Robena LLC Agreement.

143. The Settlement Agreement was exclusively drafted by Palmer or Robena LLC's counsel. It contained a release provision, which had been drafted by Palmer or Robena LLC's counsel. Mr. Visovsky and I understood, from our communications with Palmer, that the release provision was only intended as a release by Viron as to Robena LLC and Robena LP, as well as the parties involved in the management or ownership of these two entities, of any and all existing claims that Viron then had against these parties relating to Viron's services to Robena LLC under the July 1, 1998 Viron/Robena LLC Agreement. Neither Mr. Vivosvsky nor I had any intention to release any claims by this release provision in the Settlement Agreement, other than any existing claims Viron then had relating to Viron's services to Robena LLC under the July 1, 1998 Viron/Robena LLC

Agreement.

144. Palmer never represented to Viron that the Settlement Agreement, including its release provision, addressed or affected Alpine/AGTC's right to be paid under the Consulting Agreement or any claim Alpine/AGTC may have had in the future related to Alpine/AGTC's services to CoBon under the Consulting Agreement. Palmer never represented that the Settlement Agreement had anything to do with the Consulting Agreement. Mr. Visovsky and I did not understand that the Settlement Agreement, including its release provision, addressed or affected Alpine/AGTC's right to be paid under the Consulting Agreement or any claim Alpine/AGTC may have had in the future related to their services to CoBon under the Consulting Agreement. At the time Viron entered into the Settlement Agreement, Alpine/AGTC were separately looking to CoBon for getting paid under the Consulting Agreement. At that time, Mr. Visovsky and I thought CoBon was going to pay Alpine/AGTC under the Consulting Agreement as, in May 2000, CoBon had separately paid advances to Alpine/AGTC under the Consulting Agreement. CoBon was aware of the Settlement Agreement, because CoBon, as the general partner of Robena LP, had executed it on behalf of Robena LLC. As of June 2000, when Viron executed the Settlement Agreement, Mr. Visovsky and I did not understand that CoBon yet owed Alpine/AGTC under the Consulting Agreement, and Alpine/AGTC had no dispute with CoBon under the Consulting Agreement.

145. When Mr. Visovsky and I met with CoBon in July 2002 for an accounting under the Consulting Agreement, CoBon did not take the position that it had no duty to pay Alpine/AGTC under the Consulting Agreement because of the Settlement Agreement between Viron and Robena LLC. When CoBon first provided notice it was claiming it had no duty to pay Alpine/AGTC under

the Consulting Agreement in November 2002, CoBon did not state that claim was based on the June 2000 Settlement Agreement between Viron and Robena LLC.

146. The coal fines wash facility for processing the Ponds Nos. 4 and 6 coal fines was completed in March 2000, after Viron had largely ceased providing services to the Robena Synfuel Facility.

M. My Journal Entries Cited In Mr. Visovsky's Affidavit

147. My journal (the relevant excerpts of which are at Exhibit 1005) contains notes of many meetings and events described in Mr. Visovsky's Affidavit, including the following:

a. The pages bates numbered AA023448-450 in my journal are notes of a December 16, 1996 meeting with Pace Carbon Resources referred to in paragraph 22.f of Mr. Visovsky's Affidavit.

b. The pages bates numbered AA023173-176 in my journal are notes of an August 27 or 28, 1996 meeting with Miller Mining and Startec, described in paragraph 26.a of Mr. Visovsky's Affidavit.

c. The page bates numbered AA023052 in my journal has a note of my March 1996 meeting with Startec described in paragraph 26.a of Mr. Visovsky's Affidavit.

d. The pages bates numbered AA023177-178 in my journal are notes of the discussion of the Miller Project at Mr. Visovsky's and my August 28, 1996 meeting with CoBon described in paragraph 26.a of Mr. Visovsky's Affidavit.

e. The page bates numbered AA023181 in my journal has a note of my September 3, 1996 review of information and proposals regarding the Miller Project,

referenced in paragraph 26.c of Mr. Visovsky's Affidavit.

f. The page bates numbered AA023188 in my journal has a note of my review of Mr. Visovsky's draft letter to Olin Miller regarding the Miller Project that Mr. Visovsky sent to CoBon on September 6, 1996, referenced in paragraph 26.d of Mr. Visovsky's Affidavit.

g. The pages bates numbered AA023192-93 in my journal are notes of September 11, 1996 meetings with Miller and Startec and then with George Lodick regarding the Miller Project, described in paragraph 26.e of Mr. Visovsky's Affidavit.

h. The pages bates numbered AA023202-203 in my journal are notes of my review of CoBon's September 23, 1996 letter regarding the Miller Project that CoBon sent to me for my review (Exhibit 40), referenced in paragraph 26.f in Mr. Visovsky's Affidavit.

i. The page bates numbered AA023204 in my journal has a note of the September 24, 1996 call Mr. Visovsky and I had regarding the Miller Project, described in paragraph 22.g of Mr. Visovsky's Affidavit.

j. The pages bates numbered AA022294-98 in my journal are notes of my July 10, 1997 meeting with Herb and Mark Steinman, described in paragraphs 26.o and 30.a of Mr. Visovsky's Affidavit.

k. The pages bates numbered AA022325 and AA022334 in my journal are notes of the August 15 and 27, 1997 meetings Mr. Visovsky and I had with Consol, described in paragraph 30.b of Mr. Visovsky's Affidavit.

l. The pages bates numbered AA022322 and AA022325 in my journal have

notes regarding Mr. Visovsky's and my contacts and meeting with James Filiaggi in August 1997 regarding the Consol Project, described in paragraph 30.c of Mr. Visovsky's Affidavit.

m. The page bates numbered AA022329 in my journal has a note of Mr. Visovsky's and my August 20, 1997 meeting with U.S. Steel in connection with the Consol Project, described in paragraph 30.e of Mr. Visovsky's Affidavit.

n. The page bates numbered AA022338 in my journal has a note of the September 3, 1997 call Mr. Visovsky and I had with William Leedy of Constellation regarding the Consol Project, described in paragraph 30.f of Mr. Visovsky's Affidavit.

o. The page bates numbered AA022340 in my journal has a note of my September 5, 1997 telephone call with Mr. Filiaggi regarding the Consol Project, described in paragraph 30.h of Mr. Visovsky's Affidavit.

p. The page bates numbered AA022341 in my journal has a note of the September 8, 1997 meeting Constellation, Mr. Visovsky and I had with Mr. Filiaggi regarding the Consol Project, described in paragraph 30.j of Mr. Visovsky's Affidavit.

q. The page bates numbered AA022349 in my journal has a note of the September 30, 1997 meeting Mr. Visovsky and I had with Mr. Smith of Consol regarding the Consol Project, described in paragraph 30.q of Mr. Visovsky's Affidavit.

r. The page bates numbered AA022351 in my journal has a note of the October 7, 1997 meeting Mr. Visovsky and I had with Consol regarding the Consol Project, described in paragraph 30.t of Mr. Visovsky's Affidavit.

s. The page bates numbered AA022355 in my journal has a note of the October

15, 1997 meeting Mr. Visovsky and I had with Consol, described in paragraph 30.w of Mr. Visovsky's Affidavit.

t. The page bates numbered AA022365 in my journal has a note of the October 28, 1997 meeting that Mr. Visovsky and I had with Consol regarding the Consol Project, described in paragraph 31.b of Mr. Visovsky's Affidavit.

u. The page bates numbered AA022365 in my journal has a note of the October 29, 1997 meeting Mr. Visovsky and I had with Mr. Filiaggi regarding the Consol Project, described in paragraph 31.c of Mr. Visovsky's Affidavit.

v. The page bates numbered AA022368 in my journal has a note of a November 5, 1997 meeting I had with Tom Lambert of Pennsylvania Drilling Company at the Robena site regarding exploration drilling that needed to be done on the coal fines reserves in connection with the Consol Project, referenced in paragraph 31.e of Mr. Visovsky's Affidavit. I had identified and contacted Pennsylvania Drilling as a possible vendor to perform the exploration work. The page bates numbered AA022366 in my journal has a note regarding this contact.

w. The page bates numbered AA022383 in my journal are notes of the December 5, 1997 meetings that Mr. Visovsky and I had with Consol and Mr. Filiaggi regarding the Consol Project, described in paragraph 31.h of Mr. Visovsky's Affidavit.

x. The page bates numbered AA022385 in my journal has a note of the December 10, 1997 meeting Mr. Visovsky and I had with Pond Reclamation regarding the Consol Project, described in paragraph 31.i of Mr. Visovsky's Affidavit.

y. The page bates numbered AA022399 in my journal has a note of the January 13, 1998 meeting Mr. Visovsky and I had with Consol regarding the Consol Project, described in paragraph 31.l of Mr. Visovsky's Affidavit.

z. The page bates numbered AA022400 in my journal has a note of the January 14, 1998 meeting Mr. Visovsky and I had with Michael DeMarco regarding the Consol Project, described in paragraph 31.m of Mr. Visovsky's Affidavit.

aa. The page bates numbered AA022403 in my journal has a note of the January 19, 1998 introduction Mr. Visovsky and I had to Rob Dulebohn of Providian, Don Dargie of Palmer Management, and Don Logan of Coalco, in a telephone conference with Steve Nash, described in paragraph 31.p of Mr. Visovsky's Affidavit.

bb. The page bates numbered AA022404 in my journal has a note of the January 22, 1998 meeting Mr. Visovsky and I had with Mr. DeMarco regarding the Consol Project, described in paragraph 31.r of Mr. Visovsky's Affidavit.

cc. The pages bates numbered AA022405 in my journal are notes of the January 23, 1998, meeting Mr. Visovsky and I had with Consol regarding the Consol Project, described in paragraph 31.s of Mr. Visovsky's Affidavit.

dd. The page bates numbered AA022407 in my journal has a note of the January 28, 1998 meetings Mr. Visovsky and I had with Consol regarding the Consol Project, described in paragraph 31.t of Mr. Visovsky's Affidavit.

ee. The page bates numbered AA022407 in my journal has a note of the January 28, 1998 meetings Mr. Visovsky and I had with Consol regarding the Consol Project,

described in paragraph 31.v of Mr. Visovsky's Affidavit.

ff. The page bates numbered AA022408-410 in my journal are my January 30, 1998 calculations regarding Pond No. 4 and 6 coal fines, and a note of a February 2, 1998 telephone call I had with Shawn Reddington regarding Pond No. 4 data, each regarding the Consol Project and referenced in paragraph 31.x of Mr. Visovsky's Affidavit.

gg. The pages bates numbered AA022411-112 in my journal are notes of the February 4, 1998 meetings Mr. Visovsky and I had with Mr. DeMarco and then Consol regarding the Consol Project, described in paragraph 31.z of Mr. Visovsky's Affidavit.

hh. The page bates numbered AA022414 in my has a note of the February 10, 1998 meeting Mr. Visovsky and I had with Mr. DeMarco regarding the Consol Project, described in paragraph 31.dd of Mr. Visovsky's Affidavit.

ii. The page bates numbered AA022416 in my journal has a note of the February 17, 1998 meeting Mr. Visovsky and I had with Consol regarding the Consol Project, described in paragraph 31.ff of Mr. Visovsky's Affidavit.

jj. The page bates numbered AA022417 in my journal has a note of the February 18, 1998 meetings Mr. Visovsky and I had with Mr. DeMarco and then Consol regarding the Consol Project, described in paragraph 31.hh of Mr. Visovsky's Affidavit.

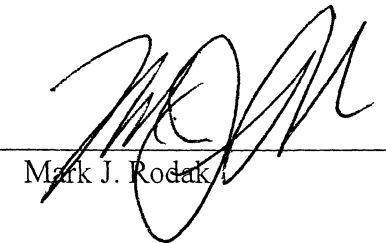
kk. The page bates numbered AA022423 in my has a note of a March 6, 1998 review by me of the Pond 4 map in connection with the Consol Project, referenced in paragraph 31.nn of Mr. Visovsky's Affidavit.

ll. The page bates numbered AA022425 in my journal has a note of the March

12, 1998 meeting Mr. Visovsky, Steve Nash and I had with Mr. Little of Consol regarding the Consol Project, described in paragraph 31.00 of Mr. Visovsky's Affidavit.

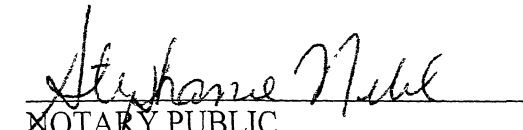
I declare under penalty of perjury that the foregoing is true and correct.

DATED: 10/27/2008

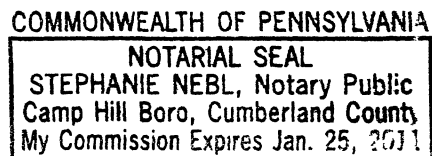


Mark J. Rodak

SUBSCRIBED AND SWORN to before me on this 27th day of October, 2008.



NOTARY PUBLIC
Residing at: Camp Hill, PA

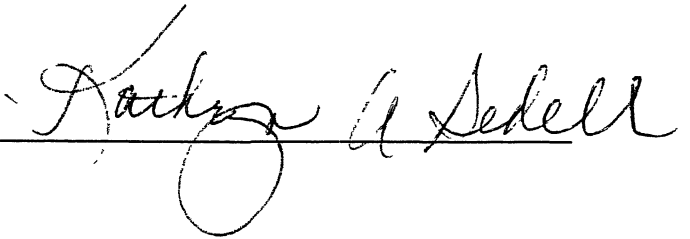


CERTIFICATE OF SERVICE

I hereby certify that on November 1st, 2008, I caused a true and correct copy of the foregoing document **AFFIDAVIT OF MARK J. RODAK REGARDING MOTIONS FOR SUMMARY JUDGMENT FILED UNDER SEAL** to be served on the following via the method indicated:

William Kelly Nash, Esq.
Evan A. Schmutz, Esq.
Curtis R. Hussey, Esq.
HILL, JOHNSON & SCHMUTZ, L.C.
RiverView Plaza, Suite 300
4844 North 300 West
Provo, UT 84604
Attorneys for Plaintiff

☐ First class, postage prepaid
U.S. Mail
☐ Facsimile (801/375-3865)
☒ Hand Delivery



Tab BB

FILED

Fourth Judicial District Court
of Utah County, State of Utah

11/7/08

Deputy

BERMAN & SAVAGE, P.C.
E. Scott Savage (2865)
Stephen R. Waldron (6810)
Kyle C. Thompson (11242)
170 South Main Street, Suite 500
Salt Lake City, Utah 84101
Telephone: (801) 328-2200
Facsimile: (801) 531-9926
*Attorneys for AGTC, Inc. and
Alpine Coal Co., Inc.*

IN THE FOURTH JUDICIAL DISTRICT COURT

IN AND FOR COUNTY OF UTAH, STATE OF UTAH

COBON ENERGY, LLC,

Plaintiff,

vs.

AGTC, INC., ALPINE COAL CO., INC., and
RICHARD G. VISOVSKY,

Defendants.

AGTC, INC. and ALPINE COAL CO., INC.,

Counterclaimants,

vs.

COBON ENERGY, LLC,

Counterdefendant.

**AFFIDAVIT OF
RICHARD G. VISOVSKY
REGARDING MOTIONS FOR
SUMMARY JUDGMENT**

FILED UNDER SEAL

Civil No. 060402937

Judge James R. Taylor

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STATE OF NEW JERSEY)
 : ss.
COUNTY OF MERCER)

I, Richard G. Visovsky, declare and state:

1. I am the President and sole owner of AGTC, Inc. (“AGTC”), located in Princeton Junction, New Jersey, a defendant and counterclaimant in this case. I am also a named defendant in this case. I make this Affidavit in support of: (a) Alpine/AGTC’s Motion for Summary Judgment as to the Complaint and for Partial Summary Judgment as to the Counterclaim; and (b) Alpine/AGTC’s Memorandum in Opposition to CoBon Energy, LLC’s Motion for Partial Summary Judgment Re: Release. These motions raise the issue of plaintiff/counterdefendant CoBon Energy, LLC’s (“CoBon”) liability to pay AGTC and its joint venture partner, Alpine Coal Company, Inc. (“Alpine”), under a “Consulting Agreement” that AGTC and Alpine entered into with CoBon, which was dated effective November 1, 1996. A true and correct copy of the Consulting Agreement is attached as Exhibit 91 to Alpine/AGTC’s Appendix of Exhibits Regarding Motions for Summary Judgment and Partial Summary Judgment (the “Appendix”), which is being filed with this Affidavit. All references to “Exhibits” in this Affidavit are to the exhibit contained in the Appendix. This Affidavit is based upon my personal knowledge, except where noted, and, if called as a witness, I could and would competently testify thereto.

2. I refer to AGTC and Alpine together as “Alpine/AGTC” in this Affidavit. I use “CoBon” to include the limited liability project companies in which it or its members were members.

3. An Affidavit by Mark Rodak, Alpine’s principal, is being filed with this Affidavit, which I refer to in this Affidavit. I have read Mr. Rodak’s Affidavit, and concur with all

understandings, considerations, knowledge and actions attributed to me in Mr. Rodak's Affidavit, based upon my review of the documents produced in this action and/or my personal knowledge. Terms used in this Affidavit that are defined in Mr. Rodak's Affidavit have the same meaning as in Mr. Rodak's Affidavit. I am familiar with both Alpine's and AGTC's files regarding the Consulting Agreement that have been produced in this action.

4. AGTC was incorporated in 1992 originally to pursue export coal sales. It also has offered coal industry consulting services. Regarding all of AGTC's dealings with CoBon, I was AGTC's sole representative and AGTC acted only by and through me. I graduated in 1979 with a B.S. in Mining Engineering from Pennsylvania State University. Through AGTC, I joint ventured on projects involving the export sale of coal and shipped approximately 3 million tons of coal overseas through ports in Mobile, Alabama and New Orleans, Louisiana. By 1996, I had approximately 18 years of experience in the coal industry, including having been employed at Shelly & Loy, Robins & Associates, Electric Fuels, and Thyssen Carbonmetal in New York City. I have been acquainted with Alpine's principal, Mark Rodak, since we both attended Penn State in 1979.

A. Alpine/AGTC's Pre-Consulting Agreement Work With CoBon

5. I was put in contact with CoBon in October 1995 by Mr. Rodak, who had been contacted by Steve Nash. Mr. Rodak and I had extensive contacts and experience with coal companies in the eastern United States, where there were significant reserves of waste coal fines, including at locations owned by the largest coal company operating in that region, Consolidation Coal Company ("Consol"). As far as Mr. Rodak and I could tell, neither CoBon nor Covol had any coal industry experience nor any meaningful contacts with eastern United States coal companies, as

CoBon had only made some cold calls to lower level marketing people. Covol and CoBon needed Mr. Rodak's and my knowledge, experience and contacts in order for Covol or CoBon to develop synfuel facilities in the eastern United States. We could put CoBon in contact with coal companies and potential development partners that would be willing to consider synfuel projects and had optimal coal fine reserves. We could put CoBon in contact with senior management of such coal companies and development partners, and work with those managements to timely get synfuel projects in place.

6. Alpine/AGTC first worked with CoBon in connection with assisting Covol in developing synfuel facilities under a March 1996 agreement between Covol and Alpine/AGTC and their joint venturer, E.J. Hodder & Associates. In working under the March 1996 agreement to assist Covol, Mr. Rodak and I worked extensively with CoBon with regard to locating and presenting potential synfuel projects to Covol. Covol eventually developed one of the synfuel projects that Alpine/AGTC introduced to Covol, through CoBon, which was known as the "Port Hodder Project" or the "Alabama Project." Covol ended up disputing whether Alpine/AGTC had presented the Port Hodder Project to Covol and whether Alpine/AGTC should be paid our commission due on the Project under the March 1996 contract. However, in September 2004, in resulting litigation, an arbitrator found that Alpine/AGTC had presented the Project and were entitled to be paid the commission, which Covol ended up paying.

7. Covol terminated the March 1996 agreement in July 1996 and, as Steve Nash informed Mr. Rodak and me, wanted to renegotiate its January 1996 agreement with CoBon regarding development of synfuel facilities. Steve Nash told Mr. Rodak and me in the summer of

1996 that CoBon wanted to continue to pursue development of synfuel facilities with Alpine/AGTC's assistance.

B. Events And Understandings Leading To The Consulting Agreement

8. On August 28, 1996, at a meeting with CoBon, Mr. Rodak and I reached a handshake agreement with CoBon to enter into a formal agreement by which CoBon would retain Alpine/AGTC to assist CoBon in its efforts to develop synfuel projects. At that meeting, Steve Nash informed us that four persons would be participating in CoBon's share of any proceeds to CoBon from our development efforts, which were Steve Nash, Robert Nash, Anton Tonc (who was a principal of ICPE), and a person whom Mr. Nash identified as the lawyer for CoBon, who we subsequently learned was W. Kelly Nash, a brother of Steve and Robert Nash. Exhibit 29 is a true and correct copy of a set of notes, produced by CoBon in this action, that I understand to be from the August 28, 1996 meeting between us and CoBon.

9. CoBon entered into an August 1996 letter agreement with Covol (Exhibit 28), a September 10, 1996 License Agreement with Covol (Exhibit 36), and the November 1, 1996 Consulting Agreement with Alpine/AGTC (Exhibit 91) in order to continue to pursue development of synfuel facilities, with CoBon as the developer rather than Covol.

10. CoBon's September 10, 1996 License Agreement with Covol originally was capped at 1.5 million tons per year capacity, which meant that CoBon was limited to itself developing or authorizing the development of (or some combination of the two) synfuel facilities with a combined total capacity of 1.5 million tons per year. After projects were developed, Covol allowed CoBon to supply license to the synfuel facilities that had been developed so as to exceed the original 1.5

million tons per year cap under the September 10, 1996 License Agreement. Exhibit 806 is a true and correct copy of a November 18, 1999 “Agreement” between CoBon and Covol, a copy of which was provided to Alpine/AGTC, that showed, at paragraph 3, that CoBon exceeded the original 1.5 million tons per year cap on its licensed capacity at its synfuel projects. Exhibit 897 is a true and correct copy of an October 26, 2000 letter agreement between Covol and CoBon, produced by CoBon in this action, that I understand refers to the increase in license to the Covol patented process that CoBon was able to supply to the PBS Project. Exhibit 949 is a true and correct copy of a “PBS Additional License Agreement,” dated October 30, 2001, between Covol and CoBon and produced by CoBon in this action, which I understand related to CoBon’s increased licensure as regards the PBS Project.

11. A company that was authorized to develop synfuel facilities, such as Covol (which owned a synfuel technology) or CoBon (which was licensed by Covol to develop synfuel facilities that would use the Covol synfuel technology), could participate in a synfuel project in any number of different ways, including by undertaking all development steps itself (and using a pre-January 1, 1997 construction contract that the company had entered into), joining with other developers to divide responsibilities for the development steps (and using a pre-January 1, 1997 construction contract that any of the developers had entered into), or authorizing another developer or business entity to undertake all of the development steps by providing the necessary license to the synfuel technology to that developer or business entity by a license or sublicense transaction (and using a pre-January 1, 1997 construction contract that the other developer had entered into). At the time the Consulting Agreement was entered into, CoBon was negotiating, with assistance from

Alpine/AGTC, letters of intent and development agreements regarding different potential synfuel projects that contemplated CoBon would participate in the projects in different manners:

a. At that time, Alpine/AGTC were assisting CoBon in negotiating letters of intent for the Bel Air and PBS Projects that proposed a joint venture between CoBon and the host coal companies, PBS and Bel Air, under which CoBon would be responsible for obtaining permits, obtaining financing, getting the facility designed and constructed, marketing and selling the facility to a tax-oriented investor, and providing the facility with license. Exhibit 92 is a true and correct copy of a December 5, 1996 executed letter of intent regarding the PBS Project that addressed CoBon's responsibilities for development of the Project. The letter of intent for the Bel Air Project was dated December 19, 1996 (Exhibit 99).

b. At the time the Consulting Agreement was entered into, CoBon was negotiating a joint development agreement for the Miller and original Mon View Projects, which proposed a joint venture between CoBon with another developer, Double Day, Inc. ("Double Day"). Under the proposal being pursued by CoBon, CoBon and Double Day would divide responsibilities for developing the proposed synfuel facilities. Exhibit 54 is a true and correct copy of an October 16, 1996 joint venture proposal to CoBon from Diversified International, Inc. a Double Day affiliate, which addressed Double Day's plan for the Projects which contemplated a division of responsibility between the developers. Exhibit 110 is a true and correct copy of a joint development letter agreement between CoBon and Double Day, dated December 27, 1996, under which they agreed to form Double

D Energy Association and divide responsibilities for developing the Miller and original Mon View Projects.

c. At the time the Consulting Agreement was entered into, CoBon was negotiating a letter of intent for the Pace Project, which proposed the formation of a joint venture between CoBon and another developer, Pace Carbon Resources. Under CoBon's proposal, CoBon's only responsibility would have been to supply license to use the Covol synfuel technology to Pace Carbon Resources. Pace Carbon Resources' responsibility would have been to obtain the project sites and feedstock, obtain financing and permits, get the facilities constructed, sell the facilities, and supply the facilities with license. CoBon instructed me that this should be CoBon's only role because it did not have the funds to have a larger role. At that time, Pace Carbon Resources was proposing the same division of responsibilities by means of a sublicense agreement between it and CoBon, rather than a joint venture agreement. Exhibit 60 is a true and correct copy of an October 18, 1996 discussion draft of a CoBon letter of intent for the Pace Project that addressed CoBon's proposed participation. Exhibit 94 is a true and correct copy of a December 11, 1996 proposal letter from Pace Carbon Resources to CoBon that addressed CoBon's proposed participation in the Pace Project. Exhibit 95 is a true and correct copy of a December 13, 1996 draft CoBon letter of intent regarding the Pace Project that addressed CoBon's proposed participation. Exhibit 100 is a true and correct copy of a December 19, 1996 draft sublicense agreement proposed by Pace Carbon Resources to CoBon that addressed CoBon's proposed participation.

d. At the time the Consulting Agreement was entered into, CoBon was negotiating a letter of intent for the Consol Project that provided CoBon with a six month right to evaluate a number of Consol sites where there were coal fines reserves, with Consol preliminarily committed to providing one or two sites selected by CoBon, providing coal fines and purchasing synfuel, subject to negotiation of a final contract. CoBon was responsible for getting the synfuel facilities financed, constructed and permitted, which meant it had to market the project to tax-oriented investors. Exhibit 113 contains a true and correct copy of the executed letter of intent for the Consol Project.

12. At the time the Consulting Agreement was negotiated and entered into, Mr. Rodak, CoBon and myself, as well as other project participants, sometimes referred to synfuel facilities as “briquette manufacturing facilities,” “coal agglomeration facilities” or some derivation thereof. These terms were used to mean a facility that would use either a briquettor, a pelletizer or an extruder to manufacture briquette or pellet-sized synfuel. “Briquette” was a generic term used to refer to any agglomerated (bound together) coal product of briquette or pellet size. This is why the Consulting Agreement referred to synfuel facilities as “briquette manufacturing facilities.” Exhibit 38 is a true and correct copy of a September 19, 1996 letter of intent proposal from CoBon regarding the PBS Project, which used the term “briquette” generically. Exhibit 60 is a true and correct copy of an October 18, 1996 discussion draft letter of intent proposal drafted by CoBon regarding the Pace Project, which used the term “briquette” generically and used the terms “briquetting” or “briquette manufacturing” facility to mean a synfuel facility using either a briquettor, pelletizer or extruder. Exhibit 92 is the December 5, 1996 letter of intent from CoBon regarding the PBS Project, which

used the term “briquette” generically and used the term “briquette manufacturing facility” to mean a synfuel facility using either a briquettor or extruder. Exhibit 95 is a true and correct copy of a December 13, 1996 proposed letter of intent from CoBon regarding the Pace Project, which used the term “briquette” generically and used the term “briquette manufacturing facility” to mean a synfuel facility using either a briquettor, pelletizer or extruder. Exhibit 97 is a true and correct copy of a December 14, 1996 proposed letter of intent from CoBon regarding the Consol Project, which used the term “briquette” generically and the term “briquette manufacturing facility” to mean a synfuel facility that would use either a briquettor, pelletizer or extruder. This December 14, 1996 letter stated that it addressed a proposal for a project to develop a “briquette manufacturing facility(ies) which will utilize proprietary Coal Technology [the Covol patented process] to manufacture coal briquettes, extrusions and/or related products, which will qualify for favorable tax treatment under Section 29. . . .”

C. The Parties’ Intentions And Understandings Under The Consulting Agreement

13. Mr. Rodak and I understood that the goal of the Consulting Agreement was development of facilities that would qualify for Section 29 tax credit treatment, with the intended benefit being CoBon’s receipt of proceeds, from which Alpine/AGTC would be paid. We understood that goal to be expressed in paragraph 1.0 of the Consulting Agreement. While the Consulting Agreement was being considered and negotiated, CoBon never communicated to Alpine/AGTC the intention that Alpine/AGTC could and would be able to perform their scope of work under the Consulting Agreement only as to synfuel projects where CoBon undertook all development steps itself and/or which were successfully completed or only as to synfuel projects

which were developed in a particular manner. Instead, during that time, CoBon communicated to Alpine/AGTC the contrary intention, which was that all of Alpine/AGTC's assistance and support to CoBon regarding all of the synfuel projects CoBon was pursuing at the time the Consulting Agreement was entered into, or that CoBon would pursue in the future before the Section 29 deadline of June 30, 1998 for placing synfuel facilities in service, would count towards Alpine/AGTC's performance of their scope of work, and that this was without regard to the development steps CoBon actually undertook itself with regard to the projects or the particular manner in which a project was developed. This intention that CoBon communicated to Alpine/AGTC is what Mr. Rodak and I understood the Consulting Agreement stated with regard to Alpine/AGTC's scope of work, which was set forth in Sections 1.0 and 1.2 of the Consulting Agreement. These communications from CoBon during the time the Consulting Agreement was being considered and negotiated included:

- a. Steve Nash of CoBon communicated an intention that Alpine/AGTC would get paid from proceeds received by CoBon from the Pace and Miller Projects, even though CoBon was not anticipating undertaking all the steps to develop those projects itself.
- b. Steve Nash of CoBon communicated to Mr. Rodak and me that Alpine/AGTC should introduce numerous synfuel projects to CoBon so as to increase the odds of CoBon successfully participating in synfuel projects up to its full available development capacity of 1.5 million tons per year, even though not all of them would be fully pursued or successful.
- c. Steve Nash of CoBon communicated to Mr. Rodak and me that the intention of the Consulting Agreement was a "team concept," such that all members of the CoBon and

Alpine/AGTC development “team” would participate in proceeds from any synfuel project that was successfully developed, regardless of which “team” member was responsible for introducing the project or making the project successful.

14. While the Consulting Agreement was being considered and negotiated, CoBon never communicated to Alpine/AGTC the intention that Alpine/AGTC had to assist and support CoBon regarding every development step there is for a synfuel project in order for Alpine/AGTC to perform their scope of work under the Consulting Agreement. Instead, during that time, CoBon communicated to Alpine/AGTC the contrary intention, that what assistance and support Alpine/AGTC actually would have to provide in order to perform their scope of work under the Consulting Agreement would depend upon how CoBon participated in the synfuel project it was pursuing or would pursue and, specifically, what development steps would be CoBon’s responsibilities as to the synfuel projects in which it did pursue. This intention that CoBon communicated to Alpine/AGTC is what Mr. Rodak and I understood to be stated in Sections 1.0, 1.1, and 1.2 of the Consulting Agreement, by those Section’s use of the phrases “as reasonably requested,” “necessary and reasonable,” and “reasonably required” to describe and qualify what assistance and support Alpine/AGTC had to provide to CoBon. CoBon’s communications during the time the Consulting Agreement was being considered and negotiated included:

a. Steve Nash of CoBon informed Mr. Rodak and me that Alpine/AGTC would be fully performing their scope of work under the Consulting Agreement as to the Pace Project by assisting and supporting CoBon in obtaining an agreement with Pace Carbon Resources by which CoBon would authorize Pace Carbon Resources to complete the

development of synfuel facilities in exchange for CoBon's right to receive proceeds for tax credits from the investors/owners of the synfuel facilities. Steve Nash subsequently communicated to me that Alpine/AGTC stood to benefit from CoBon's negotiation of its December 30 and 31, 1996 agreement with Covol that preserved CoBon's participation in the Pace Project.

b. Steve Nash of CoBon also communicated to Mr. Rodak and me the intention that Alpine/AGTC would be fully performing their scope of work under the Consulting Agreement as to the Miller Project by assisting and supporting CoBon in obtaining an agreement with Double Day to divide responsibilities for developing synfuel facilities.

15. While the Consulting Agreement was being considered and negotiated, CoBon communicated to Alpine/AGTC the intention that Alpine/AGTC's scope of services under the Consulting Agreement would be limited to assisting and supporting CoBon regarding the development of synfuel facilities, which development had to be completed by the Section 29 deadline of June 30, 1998 for placing synfuel facilities in service, and that Alpine/AGTC's scope of services would not include assisting or supporting CoBon regarding the operation of any synfuel facility. Mr. Rodak and I understood that the Consulting Agreement stated this intention, in sections 1.0, 1.2 and 1.3 of the Consulting Agreement, which stated that Alpine/AGTC's assistance and support would be only for development activities, and which stated this assistance and support had to be provided to enable CoBon to meet the June 30, 1998 deadline. During the time the Consulting Agreement was being considered, Mr. Rodak and I discussed with Steve Nash of CoBon and negotiated that operation of any synfuel facility that was developed might present opportunities for

Alpine/AGTC to enter into separate contracts from the Consulting Agreement to provide services, in particular regarding the marketing of synfuel.

16. While the Consulting Agreement was being negotiated, CoBon never communicated to Alpine/AGTC an intention that the phrase “development of briquette manufacturing facilities as contemplated by CoBon,” which was in Section 2.4 of the final Consulting Agreement, either: (a) qualified Alpine/AGTC’s scope of work; (b) meant that CoBon had to participate in or develop synfuel projects in a particular manner for Alpine/AGTC to get paid; or (c) meant that only proceeds for tax credits from synfuel facilities that were developed in a particular manner by CoBon would qualify as distributable proceeds for tax credits under the Consulting Agreement. Instead, while the Consulting Agreement was being negotiated, CoBon communicated to Mr. Rodak and me the intention that Section 2.4 simply meant that, if no facilities were developed, or if none of the facilities that were developed qualified for Section 29 tax credit treatment, Alpine/AGTC would not get paid from proceeds for tax credits under the Consulting Agreement, and would have no claim to such payment against CoBon, even though Alpine/AGTC could have fully performed their scope of work. Mr. Rodak and I understood that Section 2.4 of the Consulting Agreement stated this intention.

17. The Consulting Agreement required that any modification of its terms be in writing, signed by the parties. No such modification to the Consulting Agreement ever occurred.

18. The Consulting Agreement stated that Alpine/AGTC were independent contractors, and not joint venture partners with CoBon. Mr. Rodak and I at all times considered and understood Alpine/AGTC to be independent contractors providing services to CoBon. CoBon referred to

Alpine/AGTC as its “consultants.” Exhibit 125 is a true and correct set of notes internal to CoBon, produced by CoBon in this action, that stated “A&A is a consultant for CoBon Energy, LLC. There is no joint venture relationship.” Exhibit 126 is a true and correct copy of a January 10, 1997 letter from CoBon to AGTC in which CoBon referred to Alpine/AGTC as its “consultants.”

D. Alpine/AGTC’s Services To CoBon

19. As described in this Affidavit and Mr. Rodak’s Affidavit, Alpine/AGTC assisted and supported CoBon in connection with the Pace, PBS, Consol, Bel Air, Grant Town, Miller, original and subsequent Mon View, and Nemaquin Projects. Our assistance and support on these Projects prior to entering into the Consulting Agreement was in anticipation of entering into that Agreement. In this Affidavit, I describe Alpine/AGTC’s work on the Consol, Pace, Miller and original Mon View Projects. Mr. Rodak describes in his Affidavit Alpine/AGTC’s work on the remaining projects, as well as Alpine/AGTC’s work to assist CoBon in the permitting and construction of the Consol Project.

20. Between November 1, 1996 and July 1, 1998, I spent approximately 3,000 hours working to perform AGTC’s scope of work under the Consulting Agreement. This work involved hundreds of meetings, telephone calls and correspondences between myself and CoBon, project hosts, vendors and other project participants, some of which are detailed in the following paragraphs and in Mr. Rodak’s Affidavit. On several days I would communicate repeatedly with CoBon, and during several time periods before July 1, 1998, I would communicate daily with CoBon. In my descriptions that follow here of the events and actions by which Alpine/AGTC assisted and supported CoBon on the Projects, I do not include most of my telephone calls with CoBon.

21. CoBon relied upon Alpine/AGTC in its dealings and communications with project hosts and vendors. CoBon never met with Consol without AGTC arranging the meeting and being present. As far as I could tell, CoBon had no meaningful business relationship with any project host or vendor located in Pennsylvania, West Virginia, or Maryland, except through Alpine/AGTC. Alpine/AGTC sometimes drafted parts or all of CoBon's written communications with project participants and vendors.

1. The Pace Project

22. Alpine/AGTC assisted and supported CoBon regarding the Pace Project. In October 1996, I introduced CoBon to Pace Carbon Resources. Pace was a diverse project investment/development company, and was joint venturing with Carbon Resources to identify coal projects for development. I learned that Pace Carbon Resources might be interested in synfuel projects from Fred Murrell, who was Carbon Resources' President and had been my boss when I was a mining engineer for Electric Fuels Corporation. Based upon my review of the documents produced in this case and my recollection, Alpine/AGTC's work on the Pace Project included the following actions and events:

a. On October 3, 1996, I wrote to Mr. Murrell on behalf of CoBon, regarding Section 29 and CoBon's intentions and ability to develop synfuel projects. I wrote this letter as a follow-up to a telephone call I had with Mr. Murrell during which I introduced him to Section 29, synfuel projects and CoBon's plans. Mr. Murrell had expressed interest. Exhibit 43 is a true and correct copy of my October 3, 1996 letter to Mr. Murrell.

b. My October 3, 1996 letter led to me setting up an October 8 and 9, 1996

meeting between Pace Carbon Resources and CoBon, which I attended. Steve Nash attended for CoBon. Jim Treptow was Pace Carbon Resources' lead representative. Robert Nash participated in the October 9 meeting by telephone conference. Pace Carbon Resources was interested, and wanted to develop all of CoBon's 1.5 million tons of license it had under the September 10, 1996 License Agreement. CoBon considered providing all of its 1.5 million tons of license to Pace Carbon Resources, but eventually decided not to do this. Indicative of Pace Carbon Resources' interest, Pace, Carbon Resources and CoBon executed mutual confidentiality and non-compete agreements at the meeting. Exhibit 46 is a true and correct copy of a set of notes produced by CoBon that appear to regard this meeting.

c. On October 18, 1996, CoBon circulated to me a draft letter of intent setting forth proposed terms for the Pace Project. The letter proposed a joint venture between CoBon and Pace Carbon Resources under which CoBon's responsibilities would be limited to providing 500,000 tons per year of license, and with Pace Carbon Resources having all other development responsibilities. The letter proposed that CoBon would attempt to obtain more license from Covol, and that, if it was unable to obtain more license, Pace Carbon Resources would be free to obtain additional license to use the Covol patented process directly from Covol. Exhibit 60 is a true and correct copy of this draft letter of intent.

d. In October and November 1996, I had telephone conversations with Pace Carbon Resources, as well as CoBon, regarding the Project. On November 19, 1996, I e-mailed CoBon regarding my discussions with Pace Carbon Resources, and stated that there were no problems, except that a key Covol representative had stood up Pace representatives

on their visit to Utah to learn about the Covol patented process. Exhibit 84 is a true and correct copy of a print-out of my November 19, 1996 e-mail to CoBon. In late November or early December 1996, I arranged and attended another meeting between CoBon and Carbon Resources to negotiate terms for the Project.

e. On December 11, 1996, CoBon received from Pace Carbon Resources a proposal for CoBon to supply to Pace Carbon Resources with 1 million tons of license, which Pace Carbon Reserves would use perform the remaining development steps. Exhibit 94 is a true and correct copy of Pace Carbon Resource's December 11, 1996 proposal. Pace Carbon Resource proposed that CoBon would be paid a \$1.00 per ton "royalty" of finished product and, if the product qualified for Section 29 tax treatments, "the monetized amount of 17 cents per one dollar of Section 29 tax credits accruing." CoBon, with my and Mr. Rodak's assistance, prepared a proposed letter of intent to be sent to Pace Carbon Resources, the final draft of which was dated December 13, 1996. Exhibit 95 is a true and correct copy of the December 13, 1996 final draft of CoBon's proposal. CoBon proposed a joint venture under which CoBon's participation in the development would be limited to supplying 1 million tons of license.

f. On December 16, 1996, CoBon, Mr. Rodak, and I met with Pace Carbon Resource to negotiate terms, which meeting I had arranged. Mr. Rodak's Affidavit at paragraph 147 refers to notes of this meeting at pages Bates numbered AA023448-450 in Mr. Rodak's journal (Exhibit 1005). The parties discussed how much license CoBon was willing to provide and the price. On December 19, 1996, Pace Carbon Resources sent CoBon a

proposed sublicense agreement that provided CoBon would supply Pace Carbon Resource with 1 million tons of license. Exhibit 100 is a true and correct copy of Pace Carbon Resource's proposed sublicense agreement, which CoBon forwarded to Alpine/AGTC.

g. On December 27, 1996, Pace Carbon Resources sent CoBon a revised proposed sublicense agreement and a side letter setting forth the price CoBon would be paid for supplying license, which CoBon forwarded to Alpine/AGTC. Exhibits 111 and 112 are true and correct copies of the proposed agreement and side letter forwarded to Alpine/AGTC by CoBon. However, as CoBon informed us, on that day, Pace Carbon Resources unilaterally stopped negotiating with CoBon, and began negotiating directly with Covol for license. During the next three days, as CoBon informed us, CoBon had to negotiate with Covol and then with Pace Carbon Resources in an attempt to preserve CoBon's participation in the Project. CoBon consulted several times a day with me and Mr. Rodak regarding these negotiations. Exhibit 126 is a true and correct copy of a January 10, 1997 letter from CoBon to me, in which CoBon described the events in late December 1996 regarding the Pace Project and CoBon's consultations with me and Mr. Rodak.

h. On December 30, 1996, CoBon reached an agreement with Covol, which CoBon told Mr. Rodak and me preserved CoBon's participation in the Pace Project, and provided CoBon could get paid proceeds for tax credits based upon 500,000 tons per year of production at the Pace Project. This agreement was modified on December 31, 1996. In January 1997, CoBon wrote to me stating that the agreement, "save[d] a portion of the value of the Pace proposed sublicense" (Exhibit 126). Exhibit 115 is a true and correct copy of a

December 30, 1996 "Project Development Agreement" between CoBon and Covol, and Exhibit 117 is a true and correct copy of a December 31, 1996 CoBon and Covol modification letter, which CoBon supplied to Alpine/AGTC on January 28, 1997. We understood that, under this agreement, CoBon had given up to Covol its exclusive right to develop/license the Pace Project, which we understood had been licensed by Covol for 2 million tons per year of capacity, in exchange for a right to be paid based upon the initial 500,000 tons of production at that Project. CoBon and Covol later amended this December 30, 1996 "Project Development Agreement" in a November 18, 1999 "Agreement" (Exhibit 806), by which CoBon obtained the right to receive 20 percent of Covol's proceeds from the Pace Project, in lieu of the receiving proceeds based upon only the first 500,000 tons of production from the Pace Project.

i. In January 1997, Mr. Rodak and I took issue with the fact that Alpine/AGTC's introduction of and work on the Pace Project had resulted in Covol obtaining most of the Project (1.5 million tons capacity out of the total 2.0 million tons it was licensed), which meant that Alpine/AGTC would not be compensated for the full extent of the Project under the Consulting Agreement. Alpine/AGTC's compensation under the Consulting Agreement was tied to CoBon's receipt of consideration paid by investors/owners of synfuel facilities, and CoBon's receipt of consideration from the Pace Project would be limited to only a portion of the Project. I wrote to CoBon on January 6, 1997 regarding this issue, and asking CoBon how Alpine/AGTC were to be compensated for the portion of the Pace Project that went to Covol. A true and correct copy of my January 6, 1997 letter to

CoBon is attached as Exhibit 122. Alpine/AGTC were adversarial to Covol at that time regarding the dispute as to Alpine/AGTC's right to be paid for the Alabama Project under their March 1996 agreement with Covol. I proposed to CoBon on behalf of Alpine/AGTC that we amend the Consulting Agreement to address the issue of Alpine/AGTC being compensated for any project or portions of projects on which we worked that ended up going to Covol, as we were facing the possibility, discussed below, that a portion of the Consol Project could end up going to Consol due to CoBon not having enough licensed capacity. We never got to the point with CoBon of making a specific proposal, and there never was an amendment to the Consulting Agreement. As such, our compensation remained tied to CoBon's receipt of consideration paid by investors/owners of synfuel facilities. Alpine/AGTC never were compensated for the portion of the Pace Project that ended up with Covol, which was most of the licensed capacity of that Project.

23. Alpine/AGTC did not work on the Pace Project after December 1996. This was because CoBon was not responsible on the Project for obtaining sites and feedstock, obtaining financing, constructing, permitting, or selling the Project.

24. The Pace Project resulted in the development of four synfuel facilities that qualified for Section 29 tax credit treatment (the "Pace Synfuel Facilities"). The four Pace Synfuel Facilities, one in Virginia and the rest in West Virginia, were constructed and placed in service prior to the Section 29 deadline of July 1, 1998 for placing synfuel facilities in service. Upon information and belief, Pace Carbon Resources obtained the project contracts, oversaw the construction of the facilities using construction contracts belonging to it, obtained permits and financing, and sold the

facilities. The investors/owners of the Pace Project received favorable PLR's for the Project. The Pace Project was the subject of an IRS audit, regarding placed in service date issues, which I understand was concluded in favor of the allowance of all of the tax credits claimed by the investors/owners of the Pace Project.

25. CoBon never notified nor informed Alpine/AGTC that CoBon had not participated in the development of the Pace Synfuel Facilities or that the Pace Project was excluded from the Consulting Agreement, either as a basis for paying Alpine/AGTC or such that Alpine/AGTC's assistance and support on the Project was not performance of their scope of work under the Consulting Agreement. Mr. Rodak and I always understood, and CoBon consistently demonstrated an understanding, that CoBon had participated in the development of the Pace Synfuel Facilities such that the Pace Project was covered by the Consulting Agreement. The basis for this included the following:

a. CoBon wrote to me in its January 10, 1997 letter regarding its December 1996 agreement with Covol that preserved CoBon's participation in the Pace Project (Exhibit 126) that the purpose of that agreement was to "save a portion of the value of the Pace proposed sublicense," was a "last ditch effort[s] to save a portion of the project," that CoBon had "exercised all of the influence we could to get Covol to keep us in the deal [the Pace Project]" and that "you [Alpine/AGTC] stand to benefit directly and solely due to CoBon's last minute negotiation of the deal."

b. CoBon's December 1996 agreement with Covol that preserved CoBon's participation in the Pace Project (Exhibits 115 and 117) provided that CoBon could be paid

proceeds for tax credits based upon the first 500,000 tons of synfuel production each year by the Pace Project and could receive a share of the initial royalty fee paid by the Pace Project. This was later amended in the November 18, 1999 “Agreement” between CoBon and Covol (Exhibit 806) to provide CoBon with the right to 20 percent of the proceeds for tax credits received by Covol from the Pace Project, as well as 20 percent of Covol’s profits on binder agent sales to the Project.

c. Exhibit 345 is a true and correct copy of a February 3, 1998 “Amended and Restated License and Binder Purchase Agreement,” between Covol, as licensor, and PC Virginia Synthetic Fuel #1, LLC, produced by the Pace Project manager in this action. I understand that this agreement pertained to the Virginia synfuel facility of the Pace Project, which was considered to be the “first” facility of the Pace Project. Section 3.5 of this agreement stated: “Payment to CoBon. As to the payments described in section 3.2 and 3.3 hereof [relating to “Initial Royalty” and “Earned Royalty”], for the first 500,000 tons for the facility, Licensee shall pay such portions of these payments to CoBon as Licensor may direct. . . .”

d. Exhibit 315 is a true and correct copy of a December 12, 1997 letter from CoBon to Pace, produced by CoBon in this action. In that letter, CoBon offered to provide the Pace Project with an additional 100,000 tons per year of license. In that letter, CoBon referred to the first Pace Synfuel Facility as “the first CoBon project to be constructed by Pace” and wrote that the Pace Project utilized “500,000 tons of CoBon’s license.”

e. Exhibit 324 is a true and correct copy of a January 9, 1998 correspondence

from Coalco to Providian, produced by CoBon in this action. In this correspondence, Coalco, CoBon's financial advisor, stated to Providian, then a prospective investor/owner in the Consol Project, that "CoBon has given 500,000 tons of its license to C.C. Pace, a Florida-based company which is developing four projects, using 500,000 tons of license from CoBon and an additional 1,900,000 tons of license from received directly from Covol."

f. Exhibit 621 is a true and correct copy of a March 17, 1999 letter from CoBon to Covol, a copy of which was provided to Alpine/AGTC. In this letter, CoBon stated that the Consol Project, the PBS Project, and a portion of the Pace Project were "its three projects." CoBon consulted with Alpine/AGTC in drafting this letter.

g. Paragraph 3 of the November 18, 1999 "Agreement" between CoBon and Covol (Exhibit 806) stated:

Annual Production Capacity Description: The parties acknowledge and agree that the annual production capacity designation by CoBon as set forth in its March 17, 1999 letter is and shall be modified as follows:

Pace Project:	500,000 tons per year
Robena Project:	532,480 tons per year
Somerset Project:	<u>650,000</u> tons per year
TOTAL	1,682,480

In this paragraph, I understand that CoBon and Covol were agreeing to how CoBon's licensed capacity under the September 10, 1996 License Agreement was being allocated.

h. It is my understanding that CoBon received a share of the initial royalty fees paid by the investors/owners of the Pace Project as part of the license fee for the Pace Project. Exhibit 352 is a true and correct copy of a February 5, 1998 internal Covol

memorandum from Stanley Kimball to Brent Cook of Covol, produced by CoBon in this action. In the memorandum, Mr. Kimball calculated that CoBon was owed \$227,715 of the \$3,336,000 initial license fee that Covol was paid by the Pace Project. CoBon also received a share of the earned royalties paid by those investors/owners as the other part of their license fee, and a share of the profits on binder fees paid by those investors/owners.

2. The Miller And Original Mon View Projects

26. Alpine/AGTC assisted and supported CoBon regarding the Miller Project, which led to our assisting and supporting CoBon regarding the original Mon View Project. Double Day had introduced the Project to CoBon, and CoBon asked Alpine/AGTC to provide assistance on this Project in August 1996. The Miller Project involved a site at Miller Mining located in Sugar Creek, Ohio. There was an existing agglomeration facility at that site that used asphalt as a binder, and therefore did not qualify for Section 29 tax credits. The proposal that CoBon initially pursued with Miller Mining was to switch the existing binder with Covol binder agent, and add a dryer for producing synfuel. In October 1996, CoBon decided to pursue the Miller Project, as well as the original Mon View Project, under a joint venture basis with Double Day, where Double Day would take the lead in developing the Projects. Double Day had been pursuing developing a coal fines processing or wash facility at Mon View, and the proposal was that CoBon would supply license and would operate the synfuel facility in connection with the wash facility. Based upon my review of the documents produced in this case and my recollection, Alpine/AGTC's work in connection with the Miller and original Mon View Projects included the following actions and events:

- a. On August 27 or 28, 1996, Mr. Rodak and I met with Olin Miller of Miller

Mining and representatives of Startec, which had supplied the agglomeration technology then being used at the site. Mr. Rodak's Affidavit in paragraph 147 describes notes of this meeting at the pages Bates numbered AA023173-176 in Mr. Rodak's journal (Exhibit 1005). Mr. Rodak had met with Startec in March of 1996, at which meeting Startec had described the project. Mr. Rodak's Affidavit in paragraph 147 refers to notes of his March 1996 meeting at the page Bates numbered AA023052 in Mr. Rodak's journal (Exhibit 1005). At my and Mr. Rodak's meeting with CoBon on August 28, 1996, Steve Nash described the Miller Project to us. Mr. Rodak's Affidavit in paragraph 147 refers to notes of this discussion at the pages Bates numbered AA023177-178 in Mr. Rodak's journal (Exhibit 1005).

b. In early September 1996, CoBon sent Mr. Rodak a draft of a proposed letter of intent to be sent to Mr. Miller setting forth terms for the Project. Exhibit 31 is a true and correct copy of the draft sent by CoBon to Alpine. The letter referred to Alpine/AGTC's August 1996 meeting with Miller Mining. The draft was an outline only that set forth CoBon's standard terms, and left open the terms that would be particular to the Project.

c. On September 3, 1996, Mr. Rodak reviewed information and proposals regarding the Project. Mr. Rodak's Affidavit in paragraph 147 refers to a note of his review at the page Bates numbered AA023181 in Mr. Rodak's journal (Exhibit 1005).

d. On September 6, 1996, I sent to CoBon a draft letter to Mr. Miller under AGTC letterhead, which Mr. Rodak had reviewed. Mr. Rodak's Affidavit in paragraph 147 refers to a note of his review at the page Bates numbered AA023188 in Mr. Rodak's journal

(Exhibit 1005). The letter discussed CoBon's proposal to replace the existing binder with Covol binder and to add a dryer, and the economics of this proposal. Mr. Rodak and I advised CoBon that the better approach was to first send Mr. Miller a letter that addressed the economics of our proposal, so as to "sell" him on the proposal, before sending him a proposed letter of intent. This letter was slightly revised by CoBon, and sent by CoBon to Mr. Miller on September 9, 1996, under CoBon's letterhead. Its basic point was that switching to the Covol binder would increase the profitability of Miller's operations. Exhibit 35 is a true and correct copy of my September 6, 1996 draft and the September 9, 1996 final letter sent by CoBon.

e. On September 11, 1996, Mr. Rodak, Steve Nash and I met with Mr. Miller and Startec to discuss CoBon's proposal. On the same day, we met with Mr. Lodick of Double Day, who made a pitch for allowing Double Day to develop the Project, along with other projects. Mr. Rodak's Affidavit in paragraph 147 refers to notes of these meetings at the pages Bates numbered AA023192-93 in Mr. Rodak's journal (Exhibit 1005).

f. On September 17, 1996, Mr. Rodak supplied comments to a draft letter of intent to Mr. Miller that CoBon was continuing to draft. Exhibit 37 is a true and correct copy of Mr. Rodak's September 17, 1996 correspondence to CoBon regarding the draft letter of intent, produced by CoBon in this action. On September 21, 1996, CoBon circulated to Mr. Rodak another revision of the letter of intent for our comments. Exhibit 39 is a true and correct copy of CoBon's September 21, 1996 correspondence to Mr. Rodak. Both drafts referred to our September 11, 1996 meeting with Miller Mining and Startec. The letter

proposed a joint venture between CoBon and Miller Mining to improve the existing agglomeration facility. On September 23, 1996, CoBon sent Mr. Rodak and me a further revised draft letter of intent for our comments, saying the final letter should be done that day. Exhibit 40 is a true and correct copy of CoBon's September 23, 1996 correspondence to Mr. Rodak. Mr. Rodak's Affidavit in paragraph 147 refers to notes of his review of this letter at the pages Bates numbered AA023202-203 in Mr. Rodak's journal (Exhibit 1005).

g. On September 24, 1996, Mr. Rodak and I had a telephone call with Steve and Kelly Nash and Mr. Lodick regarding the Miller Project. Mr. Rodak's Affidavit at paragraph 147 refers to a note of this call at the page Bates numbered AA023204 in Mr. Rodak's journal (Exhibit 1005).

h. The CoBon letter of intent for the Project was never sent to Miller Mining. Sometime in October 1996, CoBon agreed to form a joint venture with Double Day (through Double Day's subsidiary Diversified Resources International, Ltd ("Diversified")) to develop the Miller Project, as well as other sites, including the Mon View site. On October 16, 1996, Double Day wrote to CoBon that Diversified was proceeding with the Miller and Mon View Projects and, on October 17, 1996, Double Day issued a press release announcing its joint venture with CoBon. Exhibit 54 is a true and correct copy of Double Day's October 16, 1996 correspondence to CoBon, a copy of which was provided to Alpine/AGTC.

i. On October 30, 1996, Double Day wrote to CoBon proposing additional terms for the joint venture. Double Day's October 30, 1996 letter referred to a proposed October 2, 1996 agreement between CoBon and Double Day. Based upon Double Day's October 30,

1996 letter, the proposal being pursued by CoBon and Double Day was that Double Day, through Diversified, would be responsible for obtaining project contracts and installing the necessary equipment, and CoBon's role would be limited to supplying license and assisting in marketing the projects for investment. CoBon forwarded Double Day's letter to Mr. Rodak on October 31, 1996. Exhibit 69 is a true and correct copy of Double Day's letter dated October 30, 1996.

j. On December 27, 1996, CoBon and Double Day entered into a joint development agreement regarding the Miller and Mon View sites, as well as an additional site. Exhibit 110 is a true and correct copy of a December 27, 1996 Joint Development Agreement, produced by CoBon in this action. This agreement stated an intention to form a joint venture called Double D Energy Association to develop the sites. CoBon's responsibility was primarily to provide license, as well as to assist in marketing the synfuel facilities to third party users. On December 31, 1996, CoBon entered into a Sublicense Agreement with Double D Energy Association, authorizing it to develop 500,000 tons per year of capacity using the Covol patented process, combined, at the Miller and Mon View sites, as well as another site. Exhibit 120 is a true and correct copy of a December 31, 1996 Sublicense Agreement between CoBon and Double D Energy Association, produced by CoBon in this action.

k. On April 9, 1997, CoBon sent to Alpine/AGTC a draft summary investment statement of the original Mon View Project to be used to market the Project to tax-oriented investors, for our review and comments. On April 24, 1997, CoBon sent Mr. Rodak a draft

investment summary for the Miller Project. Exhibit 155 is a true and correct copy of CoBon's April 24, 1997 correspondence to Alpine.

l. On June 3, 1997, I wrote to Double Day questioning its public statements regarding the development of the Mon View Project. Exhibit 189 is a true and correct copy of my June 3, 1997 correspondence. CoBon authorized me to write the letter, as Steve Nash of CoBon did not originally want controversy between CoBon and Double Day. In late May 1997, I had discussed with CoBon the issue of Double Day's non-performance of its duties under its joint development agreement with CoBon. Double Day was not developing the Miller and original Mon View Projects, which meant that 500,000 tons of CoBon's 1.5 million tons per year of licensed capacity was tied up in projects that were not going forward, while CoBon had no available license to pursue the Consol Project (as discussed further below).

m. On June 27, 1997, CoBon wrote to Double Day regarding CoBon's concerns over Double Day's failure to perform under the December 27, 1996 joint development agreement and requesting assurance that Double Day would perform. Mr. Rodak and I were copied on the letter. Neither the Miller nor the original Mon View Projects were forthcoming, which was contrary to Double Day's obligations under the joint development agreement, and contrary to Double Day's public statements. Exhibit 205 is a true and correct copy of CoBon's June 27, 1997 letter to Double Day.

n. On July 2, 1997, Mr. Rodak drafted a demand letter to Double Day for CoBon's signature. On July 3, 1997, Mr. Rodak wrote to CoBon regarding Double Day's

July 1, 1997 response to CoBon's June 27 letter. Exhibit 209 is a true and correct copy of Mr. Rodak's July 3, 1997 correspondence to CoBon.

o. On July 10, 1997, Mr. Rodak met with Herb and Mark Steinman, who were Mon View's consultants, to ascertain the status of Mr. Lodick's development efforts. Mr. Rodak learned that the original Mon View Project as proposed by Double Day was dead. Mr. Rodak's Affidavit in paragraph 147 refers to notes of this meeting at the pages Bates numbered AA022294-98 in Mr. Rodak's journal (Exhibit 1005).

p. On August 8, 1997, CoBon wrote to Double Day regarding the status of Mr. Miller and original Mon View Projects and requesting status information. On September 4, 1997, CoBon wrote to Double Day as a follow-up to its August 8, 1997 letter, demanding assurances that Double Day would perform. Exhibits 224 and 238, respectively, are true and correct copies of CoBon's August 8 and September 4, 1997 letters, which were copied to Alpine/AGTC.

q. On October 1, 1997, CoBon again wrote to Double Day asking for assurances that Double Day would perform. CoBon had sent a draft of the letter to Mr. Rodak for his comments. Mr. Rodak and I were copied on the letter. Exhibit 259 is a true and correct copy of CoBon's October 1, 1997 letter.

r. On October 2, 1997, Mr. Rodak sent to CoBon an August 21, 1997 Mon View Mining letter to Double Day that stated that Mon View's site use agreement with Double Day had been terminated. This had terminated the original Mon View Project. Exhibit 260 is a true and correct copy of Mr. Rodak's October 2, 1997 correspondence to CoBon.

s. On October 29, 1997, CoBon wrote to Double Day regarding the termination of the Miller and original Mon View Projects by their project hosts. In this letter, CoBon wrote, "To date we have not received any response to our numerous written requests. CoBon considers your complete lack of communication a breach of the Agreement and we have necessarily concluded that Doubleday is neither interested in nor able to perform as promised." Exhibit 289 is a true and correct copy of CoBon's October 29, 1997 letter.

t. In late October and early November 1997, we learned that Palmer Management Corporation (which was affiliated with Coalco, CoBon's financial advisor, and which ended up being retained as the operations manager for the Consol Project) ("Palmer"), through a subsidiary Pelletco, had approached Mon View Mining regarding developing a synfuel facility at the Mon View site that would use the Covol patented process. At the request of CoBon, on November 4, 1997, Mr. Rodak wrote to the Steinmans, Mon View's consultants, stating that CoBon had the exclusive right to develop the Mon View site, and sent this correspondence to CoBon. Exhibit 292 is a true and correct copy of Mr. Rodak's November 4, 1997 correspondence to CoBon, attaching his correspondence to the Steinmans.

u. On November 17, 1997, CoBon wrote to Double Day, providing 30 days notice of the termination of the December 31, 1996 Sublicense Agreement with Double D Energy Association for cause, pursuant to its terms, due to Double Day's failure to develop the Miller or original Mon View Projects, and notifying Double Day of its material breach of the December 27, 1996 joint development letter agreement. On December 17, 1997, CoBon wrote to Double Day stating the Sublicense Agreement had been terminated by its

terms. This ended the Miller and the original Mon View Projects for CoBon. Exhibits 300 and 317, respectively, are true and correct copies of CoBon's November 17 and December 17, 1997 letters to Double Day, produced by CoBon in this action. As far as I know, CoBon did not pursue any legal action against Double Day for breach of the December 27, 1996 joint development agreement.

3. The Consol Project

27. Alpine/AGTC assisted and supported CoBon regarding the Consol Project. Consol was one of the largest coal companies in the United States, with approximately 80 million of tons of coal sales per year from numerous mines throughout the Eastern United States. I had a long-term business relationship with Ron FlorJancic, the Executive Vice President of Marketing of Consol, and had introduced CoBon to Mr. FlorJancic and other senior management of Consol in April 1996, during the time we were assisting Covol. Without these contacts of mine, CoBon would never have gotten the Consol Project. I also had a history of purchasing coal from Consol. Alpine/AGTC's work on the Consol Project generally fell into four phases.

28. During the first phase of Alpine/AGTC's work on the Consol Project, in the last quarter of 1996, Alpine/AGTC assisted and supported CoBon regarding securing from Consol its commitment to allow CoBon to evaluate and select sites for one or two 250,000 tons per year synfuel facilities at Consol's properties. During this time, a specific project site had not been identified, as the project was merely a potential project at a Consol site or sites. Based upon my review of the documents produced in this case and my recollection, Alpine/AGTC's work in this phase included the following actions and events:

a. On October 17, 1996, I received an October 16, 1996 letter from Frank Burke, Consol's Vice President of Research and Development, expressing Consol's interest in pursuing a synfuel project. On the next day, I notified CoBon of the letter, and stated I would be responding. Exhibit 55 is a true and correct copy of my October 17, 1996 correspondence to CoBon, which included Mr. Burke's October 16, 1996 letter to me. On October 18, 1996, I wrote to Mr. Burke, inviting him to submit samples of Consol coal fines for testing with the Covol patented process. Exhibit 59 is a true and correct copy of my October 18, 1996 letter to Mr. Burke. At that time, we still had to convince Consol that the Covol patented process could produce a marketable product and that synfuel facilities could be profitable to Consol and not interfere with its existing operations. I coordinated Consol sending coal samples to CoBon for testing.

b. On or about November 18, 1996, I had a telephone call with Mr. FlorJancic, who reported that he had discussed the Project with Ronald Smith, an Executive Vice President of Consol, who stated that Consol was willing to pursue a contract preliminarily putting the Project in place. On November 18, 1996, I e-mailed CoBon about my discussion with Mr. FlorJancic. Exhibit 81 is a true and correct copy of my November 18, 1996 correspondence to CoBon.

c. On November 19, 1996, I sent Mr. FlorJancic a copy of a Covol press release announcing that Pacificorp had invested in Covol's Alabama project. I considered that Pacificorp's investment would further legitimize, in Consol's view, the synfuel project proposal we were pursuing with Consol. Exhibit 82 is a true and correct copy of my

November 19, 1996 correspondence with Mr. FlorJancic.

d. I was copied on a December 3, 1996 memorandum by Robert Nash to Steve Nash that reported on testing of Consol coal fines using the Covol patented process.

e. On December 17, 1996, I met with Mr. FlorJancic and Mr. Smith at Consol to discuss a December 14, 1996 CoBon letter of intent that CoBon had sent to Mr. FlorJancic on the same day and which I had assisted CoBon in drafting. The letter of intent set forth proposed terms for preliminarily putting the Project in place. We discussed the proposed terms. Exhibit 98 is a true and correct copy of CoBon's correspondence to Mr. FlorJancic regarding the proposed letter of intent, which states that Steve Nash or I would call Mr. FlorJancic to discuss.

f. On December 23 and 26, 1996, Mr. Smith sent me drafts of a letter of intent that had been drafted by Consol, which set forth terms as had been discussed to date and which I forwarded to CoBon. I communicated by telephone with Consol and CoBon regarding the letter of intent. Exhibits 101 and 104, respectively, are true and correct copies of Consol's December 23 and 26, 1996 correspondences to me by which it sent the proposed letters of intent.

g. On December 30, 1996, after discussing the matter with me, Mr. Smith sent me and CoBon the final letter of intent for CoBon's execution, and Steve Nash signed it on behalf of CoBon on December 31, 1996. The letter agreement gave CoBon the six month exclusive right to evaluate existing waste coal fines reserves at 38 of Consol's properties in order to determine where to place one or more synfuel facilities. Consol preliminarily agreed

to supply coal fines, project sites, and to purchase synfuel. The letter agreement contemplated CoBon and Consol would enter into a definitive agreement regarding the Project in the event CoBon's evaluation was positive. Exhibit 113 is a true and correct copy of Mr. Smith's December 30, 1996 correspondence to me and the executed letter of intent.

29. During the second phase of Alpine/AGTC's work on the Consol Project, in the first and second quarters of 1997, Alpine/AGTC assisted and supported CoBon by conducting preliminary reviews of several of the Consol sites as to which CoBon had the exclusive right to review and select for synfuel project sites, and by consulting with CoBon regarding the issues of whether CoBon had enough license to develop a project with Consol and CoBon's lack of funds to pursue a Consol project. During this time, CoBon had a six month exclusive right to select one or two of the 38 sites that Consol had made available for CoBon's evaluation, and no specific site had been selected. Based upon my review of the documents produced in this case and my recollection, Alpine/AGTC's work in this phase included the following:

a. In early January 1997, Mr. Rodak and I wrote to CoBon regarding two issues that related to proceeding with the Consol Project. First was the issue that it did not appear as if CoBon had sufficient license available under its September 10, 1996 License Agreement with Covol to pursue the Consol Project. CoBon faced the issue of already having put in place projects that, if developed, would use up all of CoBon's then-available license under its September 10, 1996 License Agreement with Covol (which then was capped at 1.5 million tons per year of capacity). CoBon had provided 500,000 tons per year of license to the Pace Project and had supplied 500,000 tons per year of license to Double D Energy

Association for the Miller and original Mon View Projects. The PBS and Bel Air Projects each were committed at 250,000 tons per year. It was required that there already have been binding construction contracts for these Projects. This left CoBon with no firm license available to develop a synfuel facility at a Consol site. CoBon had requested additional license capacity from Covol, but Covol had refused the request. Exhibit 65 is a true and correct copy of an October 24, 1996 letter from Covol to CoBon denying CoBon's request for additional license capacity, which CoBon produced in this action. Alpine/AGTC did not consider it advisable to actively pursue development of a synfuel project with Consol without CoBon having a firm ability to commit license to the project. Second was the issue that our work on the Pace Project had led to a considerable benefit to Covol without possibility of compensation to Alpine/AGTC under the Consulting Agreement, which threatened to reoccur as to the Consol Project. Mr. Rodak and I also were hesitant to work on putting a Consol project in place only to have all or most of the project go to Covol without possibility of compensation to Alpine/AGTC because CoBon did not have available license, as had happened regarding a large portion of the Pace Project. I wrote to CoBon regarding these issues on January 6, 1997 (Exhibit 122). Exhibit 128 is a true and correct copy of a January 15, 1997 letter from Mr. Rodak to CoBon that addressed the capacity issue.

b. Also during this time, CoBon informed us that it did not have any funds to be able to conduct an exploration program that would be needed to select a site and convince Consol of the project's feasibility, and was unable to obtain financing for such a program.

c. In a January 28, 1997 memorandum to Alpine/AGTC, within a month of

having assisted CoBon in obtaining Consol's December 30, 1996 agreement, CoBon complained that I was dragging on moving forward with Consol. Exhibit 132 is a true and correct copy of CoBon's January 28, 1997 correspondence to Alpine/AGTC in this regard. I explained, in response, the issue of proceeding without CoBon having sufficient license. I also made a proposal for modifying the Consulting Agreement, which modification would provide for Alpine/AGTC to be compensated in the event that a portion of a synfuel project ending up with Covol. Exhibit 134 is a true and correct copy of my January 31, 1997 proposal letter. CoBon did not respond to the proposal, and no modification to the Consulting Agreement was ever agreed to.

d. The issue regarding whether CoBon had license available to pursue the Consol Project continued through the second quarter of 1997. Mr. Rodak and I had numerous communications with CoBon by telephone regarding this issue, and we attempted to obtain additional license for CoBon as part of our on going settlement negotiations with Covol regarding Alpine/AGTC getting paid for the Alabama Project under our March 1996 agreement with Covol. This was with the knowledge of CoBon, which was also negotiating with Covol for a settlement of its interest in the Alabama Project. Exhibit 190 is a true and correct copy of a June 3, 1997 letter from me to CoBon regarding the license issue.

e. The issue of unavailability of license was resolved in July 1997, when license became available to CoBon with its decision to forego the Bel Air Project and Double Day's failure to proceed with the Miller and Mon View Projects, and Alpine/AGTC proceeded to secure Consol's Robena site for development of a synfuel project by CoBon (as described

in the next paragraph).

f. During this phase, I conducted preliminary evaluations of several of the sites Consol had made available, and I also received coal fines information from Consol under the December 30, 1996 letter of intent.

30. During the third phase of Alpine/AGTC's work on the Consol Project, in the second and third quarters of 1997, the Consol Project became focused upon Consol's Robena site, as Alpine/AGTC identified and assisted and supported CoBon in securing that site for development by CoBon. During this phase, Alpine/AGTC also assisted and supported and provided consultation to CoBon regarding Constellation Energy Corporation's ("Constellation") interest in investing in the Project. Constellation was a large power company based in Baltimore, Maryland, which had been identified as a potential tax-oriented investor by Coalco, CoBon's financial consultant for purposes of locating potential tax-oriented investors. Based upon my review of the documents produced in this case and my recollection, Alpine/AGTC's work in this phase included the following actions and events:

a. The Consol Project became focused upon Consol's Robena site in July 1997, when Alpine/AGTC advised CoBon to pursue developing a synfuel facility at that site. Mr. Rodak had learned that the Robena site would be the optimal Consol site to develop a synfuel facility at a July 10, 1997 meeting with Mon View Mining's consultants, Herb and Mark Steinman. Mr. Rodak's Affidavit in paragraph 147 refers to notes of this meeting at the pages Bates numbered AA022294-98 in Mr. Rodak's journal (Exhibit 1005). There were two slurry ponds at Consol's Robena site, Pond Nos. 4 and 6, which held large reserves of

high quality fines. Mr. Rodak learned from the Steinmans that the fines in Pond No. 4, which was much larger than Pond No. 6, were owned by a third-party, Pond Reclamation, Inc. ("Pond Reclamation"), located in Maryland and controlled by James Filiaggi. Pond Reclamation was involved in litigation with Consol because Consol's operations were covering up the coal fines owned by Pond Reclamation by adding new coal fines to build up the containment dikes of Pond No. 4.

b. CoBon's exclusive right to evaluate and select Consol sites for development under the December 31, 1996 letter of intent had lapsed at the end of June 1997 without CoBon selecting a site but I thought we could obtain an extension in order to consider the Robena site. However, upon expressing CoBon's interest in the Robena site to Consol at an August 15, 1997 meeting with Mr. Smith of Consol, we learned that Consol had tentatively agreed to allow another company the right to develop a synfuel facility at the Robena site. We also met with Consol on August 27, 1997 to discuss CoBon pursuing a synfuel project at the Robena site. Consol remained uncertain. Mr. Rodak's Affidavit in paragraph 147 refers to notes of these meetings at the pages Bates numbered AA022325 and AA022334 in Mr. Rodak's journal (Exhibit 1005). However, Mr. Rodak and I realized that whichever party was able to secure the coal fines in Pond No. 4 from Mr. Filiaggi of Pond Reclamation would be able to secure the Robena site for development of a synfuel facility.

c. In August 1997, Mr. Rodak and I approached Mr. Filiaggi and obtained his exclusive commitment to sell the Pond No. 4 fines to CoBon or its assigns. Mr. Rodak called Mr. Filiaggi on August 7, 1997 and we met with Mr. Filiaggi on August 14, 1997. Mr.

Rodak's Affidavit in paragraph 147 refers to notes of our contacts and meeting at the pages Bates numbered AA022322 and AA022325 in Mr. Rodak's journal (Exhibit 1005). We negotiated with Mr. Filiaggi for CoBon the right to purchase the coal fines in Pond No. 4 from Pond Reclamation for payment of a monthly royalty of \$3.00 per ton, and with a minimum annual royalty of \$250,000, and an eighteen month option to purchase all of the coal fines in Pond No. 4 for \$4 million. Mr. Filiaggi is the one who proposed the \$4 million purchase option. We also got Mr. Filiaggi to agree to drop Pond Reclamation's litigation against Consol. Mr. Rodak drafted a letter of intent setting forth the terms that we had negotiated, which Mr. Filiaggi ultimately signed. Exhibit 235 is a true and correct copy of a draft of the letter of intent between CoBon and Pond Reclamation that Mr. Rodak drafted.

d. The other developer to which Consol had tentatively committed the Robena location did not have any rights or commitments to Pond No. 4, which was essential to developing a synfuel facility at Consol's Robena site. Mr. Rodak and I were able to eventually convince Consol to allow CoBon to develop the Robena site because Alpine/AGTC had obtained a commitment to the Pond No. 4 fines for CoBon, Alpine/AGTC had gotten Pond Reclamation's agreement to drop its litigation against Consol, and CoBon was in a position, as a result of Alpine/AGTC's securing a commitment from Pond Reclamation regarding the coal fines in Pond No. 4, to pursue the project next to Consol's Robena site without Consol's involvement, which Consol wanted to avoid.

e. During this time, on August 20, 1997, Mr. Rodak and I also visited U.S. Steel to obtain information regarding the coal fines in Pond No. 4, as U.S. Steel had placed the

finest there. Mr. Rodak's Affidavit in paragraph 147 refers to a note of the meeting at the page Bates numbered AA022329 in Mr. Rodak's journal (Exhibit 1005).

f. On September 3, 1997, Mr. Rodak and I had a telephone conversation with William Leedy of Constellation, and as a follow-up on September 4, 1997, I wrote to Constellation regarding negotiations with Consol for development of the Project. Mr. Rodak's Affidavit in paragraph 147 refers to a note of this call at the page Bates numbered AA022338 in Mr. Rodak's journal (Exhibit 1005). Exhibit 237 is a true and correct copy of my September 4, 1997 correspondence to Constellation, which references the telephone call. We had communicated with Constellation at CoBon's request. Alpine/AGTC had been working with Constellation regarding its potential investment in the PBS Project since July 1997, and Constellation had become more interested in pursuing the Consol Project than the PBS Project. Constellation was attempting to go directly to Consol to negotiate for the Project, to the possible exclusion of CoBon, as Constellation was a major customer of Consol. I advised CoBon that CoBon, with Mr. Rodak's and my assistance, needed to conduct the negotiations, and CoBon agreed. I wrote to Constellation that it needed to first get a signed coal fines supply agreement with Pond Reclamation regarding Pond No. 4 before going to Consol because obtaining the agreement was a prerequisite to securing the Robena site away from Consol's other developer. This also meant that Constellation would have to work with CoBon to do the Project because we had already obtained Pond Reclamation's commitment regarding Pond No. 4. I wrote to Constellation that, once we had an agreement between Constellation and Pond Reclamation, Alpine/AGTC could negotiate with Consol

for Constellation's access to the Robena site to conduct due diligence.

g. Mr. Rodak and I had advised CoBon that any agreement between Constellation and Pond Reclamation should have a provision allowing it to be transferable to CoBon in the event Constellation withdrew from the Project. As a result, on September 4, 1997, CoBon copied me and Mr. Rodak on a letter to Constellation stating that the letter of intent between Constellation and Pond Reclamation should have an assignment clause in favor of CoBon, in the event Constellation should withdraw from the Project. Exhibit 240 is a true and correct copy of CoBon's September 4, 1997 correspondence to Constellation on which we were copied.

h. On September 5, 1997, Constellation sent CoBon, Mr. Rodak and me a draft letter of intent between Constellation and Pond Reclamation regarding purchase of the Pond No. 4 coal fines. Exhibit 246 is a true and correct copy of Constellation's September 5, 1997 correspondence. On that same day, Mr. Rodak had a telephone call with Mr. Filiaggi. Mr. Rodak's Affidavit in paragraph 147 refers to a note of this call at the page Bates numbered AA022340 in Mr. Rodak's journal (Exhibit 1005).

i. On September 5, 1997, I wrote to CoBon setting out four possible scenarios under which the Robena site could be developed. Given CoBon's control of Pond No. 4 as a result of our assistance, it was possible that CoBon could develop a project with the other party Consol was talking with about the Robena site at a site adjacent to the Robena site. At this time, I did not know the identity of the other developer who was also pursuing the Robena site. I wrote that it was being discussed that the project could either be: (1) by

CoBon and Constellation; (2) by CoBon, Constellation, and the other developer looking at the site; (3) by CoBon and the other developer; or (4) by CoBon and Consol only, to be bank financed. Exhibit 242 is a true and correct copy of my September 5, 1997 correspondence to CoBon.

j. On September 8, 1997, at a meeting Mr. Rodak and I arranged, CoBon, Constellation, Mr. Rodak and I met with Mr. Filiaggi to negotiate a letter of intent regarding purchase of the Pond No. 4 coal fines. We came to terms, with only the documentation remaining. Mr. Rodak's Affidavit at paragraph 147 refers to a note of this meeting at the page Bates numbered AA022341 in Mr. Rodak's journal (Exhibit 1005).

k. On September 12, 1997, I sent to Constellation, with a copy to CoBon, a report of 1987 drilling results for the Robena Pond No. 6 that Mr. Rodak and I had obtained from U.S. Steel, and a cost analysis for the Project that I had prepared. Exhibit 248 is a true and correct copy of my September 12, 1997 correspondence to Constellation.

l. On September 12, 1997, CoBon, Mr. Rodak and I received from Constellation a revised draft letter of intent with Pond Reclamation.

m. On September 15, 1997, I sent to Constellation a revised cost analysis for the Project. I also sent the cost analysis to Gordon Deane of Palmer, which was an affiliate of Coalco Corporation, which was CoBon's financial consultant working to obtain investors for CoBon's synfuel projects. In my cover memo to Mr. Deane, I wrote: "As Steve Nash is out of pocket all week, Mark and I will be looking to wrap up this project in some manner. At this point, it may or may not include Constellation." Exhibit 251 is a true and correct

copy of my September 15, 1997 correspondence to Mr. Deane.

n. Also on September 15, 1997, I wrote to Mr. FlorJancic of Consol stating that we had wrapped up negotiations with Pond Reclamation and so needed access to the Robena site to conduct due diligence, and that I had prepared an initial economic analysis of the Project that I needed to review with Consol. We still had to convince Consol to pursue the Project, which entailed convincing Consol of the viability of the Project and demonstrating to Mr. FlorJancic that CoBon was prepared to pursue the Project with or without Consol's involvement (if necessary, at a site adjacent to Consol's Robena site). Once I could convince Mr. FlorJancic of CoBon's intent, I knew he would push the Project at Consol, which did not want a non-union operation existing adjacent to its Robena site. In that regard, on September 18, 1997, I sent Mr. FlorJancic the economic analysis for the Project that I had prepared. Exhibits 252 and 255, respectively, are true and correct copies of my September 15 and September 18, 1997 correspondences to Mr. FlorJancic.

o. On September 23, 1997, CoBon, Mr. Rodak and I received from Constellation a further revised letter of intent with Pond Reclamation, which was the final version of the agreement. Exhibit 253 is a true and correct copy of Constellation's September 23, 1997 correspondence. Mr. Filiaggi was not available to sign it until October 1, 1997.

p. On September 24, 1997, I wrote to Mr. Smith of Consol, providing an update of our efforts to put the Project in place and to obtain financing, and telling him we had concluded negotiations with Pond Reclamation. This was key as I was informing Mr. Smith that CoBon controlled Pond No. 4, which meant CoBon would have to be a participant in the

development of a synfuel facility at the Robena site, and was in a position to pursue the project without Consol at a site adjacent to Consol's Robena site. I called Mr. Smith the following day to discuss the Project and to set up a meeting with Consol. Exhibit 256 is a true and correct copy of my September 24, 1997 correspondence to Mr. Smith.

q. On September 30, 1997, Mr. Rodak and I met with Mr. Smith, and discussed two options: (1) Consol working with its other developer to the exclusion of CoBon, or (2) doing the project with CoBon's involvement. Mr. Rodak's Affidavit in paragraph 147 refers to a note of this meeting at the page Bates numbered AA022349 in Mr. Rodak's journal (Exhibit 1005). At some time, we learned that the other developer was a subsidiary of one of Consol's largest customers, MCN of Detroit Edison.

r. On October 3, 1997, CoBon sent Mr. Rodak and me a copy of an October 3, 1997 memorandum that CoBon had received from Coalco, which proposed a discussion agenda for a meeting with CoBon, Consol and Constellation to be held on the week of October 7. CoBon asked Mr. Rodak and me to review the memo and provide comments. Exhibit 261 is a true and correct copy of CoBon's October 3, 1997 correspondence to us. On the same day, CoBon sent a proposed list of points to cover with Consol at the meeting. I advised CoBon that we needed to control how Consol was approached, as Consol was in the middle of having two of its major customers interested in pursuing a synfuel project at the Robena site and it remained that CoBon possibly could pursue the Project with or without either customer (because we controlled Pond No. 4). In the afternoon of October 3, 1997, I sent Steve Nash of CoBon my proposed agenda for the meeting, and wrote, "The only

variation from this agenda is should we be able to come to an agreement directly with this mystery company without Constellation.” Exhibit 263 is a true and correct copy of my October 3, 1997 correspondence to CoBon. I also wrote: “Steve, in order to negotiate this agreement in a timely manner, this is the only agenda I believe we will need going into a meeting. As I have stated to Ron Smith prior to this time, we have no predetermined agenda for this operation. Let’s go into the meeting with an open mind. Also, we can keep things moving much easier from this basis.” Later that day, CoBon sent Constellation a proposed agenda, with a cover note that basically copied what I had written to CoBon. Steve Nash of CoBon wrote to Constellation: “I suggest we utilize the following as an outline/agenda for our upcoming meeting at Consol. In order to negotiate this agreement in a timely manner, this is the agenda I believe we will need going in to a meeting. As Rick Visovsky has stated to Ron Smith prior to this time, we have no pre-determined agenda for this operation. We need to go into [the] meeting with an open mind. Also, we can keep things moving much faster from this basis.” Exhibit 264 is a true and correct copy of CoBon’s October 3, 1997 correspondence to Mr. Leedy.

s. On October 6, 1997, I wrote to Mr. Smith of Consol, sending him a copy of the letter of intent between Pond Reclamation and Constellation. In the letter, I proposed an initial meeting between Consol, CoBon, and Consol’s other developer, to be followed by a second meeting that would include Constellation. I wanted to first have a meeting with Detroit Edison involved in order to be able to demonstrate to them that CoBon would have to be involved in the development (because CoBon controlled Pond No. 4), thus avoiding

putting Consol in the middle of having to chose between two major customers as with whom it would do the Project. Exhibit 265 is a true and correct copy of my October 6, 1997 letter to Mr. Smith.

t. On October 7, 1997, CoBon, Mr. Rodak and I met with Mr. Smith and Mr. Little of Consol. Mr. Rodak's Affidavit in paragraph 147 refers to a note of this meeting at the page Bates numbered AA022351 in Mr. Rodak's journal (Exhibit 1005). Exhibit 268 is a true and correct copy of CoBon notes of an October 7, 1997 meeting with Consol. Constellation did not attend the meeting. It was at this meeting that Consol agreed to allow CoBon to develop a synfuel facility at the Robena site, with terms to be negotiated. We discussed the letter of intent we had with Pond Reclamation, the due diligence that we needed to perform, using Pond No. 6, in addition to Pond No. 4 for the Project, and a proposed structure for the Project. Consol executed a confidentiality agreement, which established its intent to proceed with CoBon developing a synfuel facility. On October 9, 1997, CoBon sent a copy of the confidentiality agreement to Constellation, asking Constellation to abide by its terms, which Constellation did not execute. Exhibit 270 is a true and correct copy of CoBon's October 9, 1997 correspondence to Constellation, which attached the confidentiality agreement.

u. On October 13, 1997, Mr. Rodak received a price proposal from Terra Testing regarding drilling work needed to substantiate the coal fines reserve at Ponds No. 4 and 6. Mr. Rodak had contacted Terra Testing to solicit the bid.

v. On October 9, 1997, CoBon sent me a draft letter of intent setting forth terms

for the Project that had been discussed at the October 7, 1997 meeting. Exhibit 269 is a true and correct copy of the portion of CoBon's October 9, 1997 correspondence that remained in my files. On October 10, 1997, Mr. Rodak and I sent CoBon proposed language to be included in the letter of intent, which he incorporated in a subsequent draft. Exhibits 272, 273, 274 are true and correct copies of our correspondences to CoBon in this regard and of CoBon's mark-up of my correspondence for inclusion in the following draft of the letter of intent. On October 13, 1997, CoBon sent us Constellation's comments to the draft letter of intent. On October 14, 1997, CoBon sent a revised draft of the letter of intent to me, Mr. Rodak, and Constellation. Exhibit 277 is a true and correct copy of the draft that CoBon supplied to Alpine, with comments by Mr. Rodak. The proposal included development of a coal fines wash facility in connection with the synfuel project, which would be needed in order to optimize use of the coal fines from Ponds Nos. 4 and 6.

w. On October 15, 1997, Mr. Rodak and I met with Consol and received safety training at Consol, which enabled us to access the Robena site in order to conduct exploration work and other due diligence work. Mr. Rodak's Affidavit in paragraph 147 refers to a note of this meeting at the page Bates numbered AA022355 in Mr. Rodak's journal (Exhibit 1005).

x. Constellation withdrew from the Consol Project in or about the third week of October 1997 to pursue an investment in the Pace Project. Exhibit 280 is a true and correct copy of an October 23, 1997 Coalco memorandum on the subject, which CoBon forwarded to Alpine/AGTC.

31. During the fourth phase of Alpine/AGTC's work on the Consol Project, which occurred after Constellation withdrew, in the last quarter of 1997 and the first quarter of 1998, Alpine/AGTC assisted and supported CoBon regarding obtaining project contracts with Consol and Pond Reclamation. During the second quarter of this last phase, Alpine/AGTC also assisted and supported CoBon regarding securing an investment in the Project by Providian Financial Corporation, through its affiliates Providian Services and Providian Bancorp ("Providian"). Providian had been located as a potential tax-oriented advisor by Coalco. Based upon my review of the documents and my recollection, Alpine/AGTC's work in this phase included the following actions and events:

a. On October 24, 1997, I sent CoBon an updated cost analysis for the Project. Exhibit 284 is a true and correct copy of my October 24, 1997 correspondence to CoBon. Also on October 24, 1997, I wrote to Mr. Smith of Consol providing him with an update on the Project and stating that enough due diligence had been done to warrant further meetings regarding the Project. I reported that no red flags had been uncovered and that we needed to negotiate an agreement between Consol and CoBon. Exhibit 285 is a true and correct copy of my October 24, 1997 correspondence to Mr. Smith.

b. On October 28, 1997, Mr. Rodak and I met with Mr. Smith and Mr. Little of Consol. Mr. Rodak's Affidavit in paragraph 147 refers to a note of this meeting at the page Bates numbered AA022365 in Mr. Rodak's journal (Exhibit 1005). We reported that we had in hand an executed agreement for the Pond No. 4 coal fines. We discussed terms of the Project.

c. On October 29, 1997, Mr. Rodak and I met with Mr. Filiaggi, who confirmed that we had the exclusive right to purchase the Pond No. 4 coal fines, even though Constellation had withdrawn. Mr. Rodak's Affidavit in paragraph 147 refers to a note of this meeting at the page Bates numbered AA022365 in Mr. Rodak's journal (Exhibit 1005). It was agreed that we would proceed to negotiate a new coal fines purchase agreement that would be between CoBon, as purchaser, and Pond Reclamation, as seller.

d. On November 3, 1997, I had a telephone call with Mr. Little, who told me Consol wanted to proceed directly with negotiations of final project contracts, rather than negotiating a letter of intent. I passed this on to CoBon. Exhibit 291 is a true and correct copy of my November 3, 1997 correspondence to CoBon in this regard.

e. On November 5, 1997, Mr. Rodak met with Tom Lambert of Pennsylvania Drilling Company at the Robena site regarding exploration drilling that needed to be done on the coal fines reserves. Mr. Rodak's Affidavit in paragraph 147 refers to a note of this meeting at the page Bates numbered AA022368 in Mr. Rodak's journal (Exhibit 1005). Mr. Rodak had identified and contacted Pennsylvania Drilling as a possible vendor to perform the exploration work. Mr. Rodak's Affidavit in paragraph 147 refers to this contact and a note of the contact at the page Bates numbered AA022366 in Mr. Rodak's journal (Exhibit 1005). On November 11, 1997, Mr. Rodak received a bid from Pennsylvania Drilling to perform the work, which CoBon accepted. Exhibit 297 is a true and correct copy of Pennsylvania Drilling's bid. I understand CoBon obtained the money to pay Pennsylvania Drilling from Covol.

f. On November 14, 1997, CoBon and Covol entered into a "Financing Agreement" under which Covol agreed to provide up to \$1,000,000 for the purchase of a dryer and pelletizer for the Project. In exchange, Covol was to be paid \$0.125 per \$1.00 of Section 29 tax credits generated by the Project. CoBon did not seek our advice as to the selection of the dryer, which ended up being ill-suited for its intended use.

g. On November 18, 1997, CoBon sent to me "sample" closing documents obtained from Covol, stating "CoBon believes the documents may be helpful in assisting all parties to reduce to writing our various discussions and agreements" between CoBon and Consol. Exhibit 301 is a true and correct of CoBon's November 18, 1997 correspondence, without the attachments.

h. On December 4, 1997, Alpine/AGTC received from CoBon a draft lease agreement for the Robena site. On December 5, 1997, Mr. Rodak and I met with R. Smith regarding the site lease. Mr. Rodak and I then went to Maryland and met with Mr. Filiaggi to begin negotiating the final coal fines purchase agreement for Pond No. 4. Mr. Rodak's Affidavit in paragraph 147 refers to notes of these meetings at the page Bates numbered AA022383 in Mr. Rodak's journal (Exhibit 1005).

i. On December 9, 1997, Mr. Rodak sent to CoBon a coal fines purchase agreement he had used in the past, to be used as a form for an initial draft of a coal fines purchase agreement with Pond Reclamation. Exhibit 311 is a true and correct copy of Mr. Rodak's December 9, 1997 correspondence to CoBon. We needed CoBon to put together a draft agreement that we would use in negotiations with Mr. Filiaggi, which were scheduled

to recommence the next day. CoBon sent us a draft and, on December 10, 1997, we met with Pond Reclamation to negotiate its terms. Exhibit 312A is a true and correct copy of the draft that CoBon sent to us on December 10, 1997. Mr. Rodak's Affidavit in paragraph 147 refers to a note of this meeting at the page Bates numbered AA022385 in Mr. Rodak's journal (Exhibit 1005).

j. It had been agreed that Consol would operate the synfuel facility, as well as the coal fines wash facility that was planned to be built in connection with the synfuel facility, so an operations agreement was going to be one of the project contracts. On December 22, 1997, I received a draft "Operations and Maintenance Agreement" from CoBon for my review and comments.

k. On January 11, 1998, I sent to Pond Reclamation's counsel, Michael DeMarco, a revised "Coal Fines Supply Agreement" regarding the Project's right to purchase the coal fines in Pond No. 4. Exhibit 325 is a true and correct copy of my January 11, 1998 correspondence to Mr. DeMarco.

l. On January 13, 1998, Mr. Rodak and I met with Consol to discuss the terms being negotiated for the project contracts and the status of these negotiations. Consol requested that we obtain the option to purchase the coal fines of Pond No. 4, which Pond Reclamation had offered, on behalf of Consol. Consol wanted to be able to obtain ownership of the coal fines, if the Project was successful, in order to be able to reclaim the Robena site without interference from a third-party such as Pond Reclamation. Mr. Rodak's Affidavit in paragraph 147 refers to a note of this meeting at the page Bates numbered AA022399 in

Mr. Rodak's journal (Exhibit 1005).

m. On January 14, 1998, Mr. Rodak and I met with Mr. DeMarco to negotiate terms of the "Coal Fines Supply Agreement" with Pond Reclamation. We discussed with him Consol's desire that we obtain the purchase option on behalf of Consol. Mr. Rodak's Affidavit in paragraph 147 refers to a note of this meeting at the page Bates numbered AA022400 in Mr. Rodak's journal (Exhibit 1005).

n. On January 14, 1998, CoBon and Providian entered into a letter of intent giving Providian a 30 day right to conduct due diligence regarding an potential investment in the Project.

o. On January 16, 1998, Alpine/AGTC received from CoBon pro formas for the Project that had been prepared by Coalco and CoBon. Exhibit 330 is a true and correct copy of the pro formas that Alpine/AGTC received.

p. On January 19, 1998, Mr. Rodak and I were introduced to Rob Dulebohn of Providian, Don Dargie of Palmer, and Don Logan of Coalco, in a telephone conference with Steve Nash. Mr. Rodak's Affidavit in paragraph 147 refers to a note of this introduction at the page Bates numbered AA022403 in Mr. Rodak's journal (Exhibit 1005). Mr. Dulebohn was the head of Providian's team considering the investment.

q. Alpine/AGTC received from CoBon revised January 21, 1998 drafts of a "Lease Agreement" and "Operations and Maintenance Agreement" for our review and comments.

r. On January 22, 1998, Mr. Rodak and I met with Mr. DeMarco to further

negotiate the “Coal Fines Supply Agreement” regarding Pond No. 4. Mr. Rodak’s Affidavit in paragraph 147 refers to a note of this meeting at the page Bates numbered AA022404 in Mr. Rodak’s journal (Exhibit 1005).

s. On January 23, 1998, Mr. Rodak and I met with Consol to discuss negotiations of the project contracts. Mr. Rodak’s Affidavit in paragraph 147 refers to a note of this meeting at the page Bates numbered AA022405 in Mr. Rodak’s journal (Exhibit 1005).

t. On January 27, 1998, I had a telephone call with Kelly Nash, CoBon’s counsel and Steve and Robert Nash’s brother, regarding issues being raised by the Consol legal department regarding the project contracts under negotiation. Kelly Nash sent to me and Steve Nash an outline of these issues. Exhibit 343 is a true and correct copy of the cover page of Kelly Nash’s correspondence in this regard. On January 28, 1998, Mr. Rodak and I met with Consol legal department regarding these issues. We also met with Consol’s marketing department, which was involved in negotiations of the synfuel marketing contract for the Project. Mr. Rodak’s Affidavit in paragraph 147 refers to a note of these meetings at the page Bates numbered AA022407 in Mr. Rodak’s journal (Exhibit 1005).

u. On January 27, 1998, Mr. Rodak and I received from CoBon Mr. Dulebohn’s January 26, 1998 fax enclosing Providian’s retainer letters with its due diligence consultants, which included Orrick as its legal counsel and Energy Ventures Analysis (“Energy Ventures”) as its coal fines consultant. Exhibit 342 is a true and correct copy of CoBon’s January 27, 1998 facsimile transmittal to us.

v. On January 28, 1998, Mr. Rodak and I met with Consol's in-house attorneys and marketing department to discuss the project contracts. Mr. Rodak's Affidavit in paragraph 147 refers to a note of these meetings at the page Bates numbered AA022407 in Mr. Rodak's journal (Exhibit 1005).

w. On January 29, 1998, I received from Mr. DeMarco a revised draft "Coal Fines Supply Agreement" regarding the Pond No. 4 coal fines. Mr. Demarco had removed the 18-month, \$4 million option to purchase the coal fines from the "Coal Fines Supply Agreement," and created a separate "Coal Fines Option Agreement" between Pond Reclamation and Alpine/AGTC for that option. This was done with the knowledge of CoBon. At no time did Alpine/AGTC have or anticipate having the financial ability to exercise the option on their behalf, and the option was never exercised. Exhibit 344 is a true and correct copy of the January 29, 1998 draft of the "Coal Fines Supply Agreement" that I received. Exhibit 344A is a true and correct copy of a mark-up of that agreement, with notations by Mr. DeMarco showing he had created a separate "Coal Fines Option Agreement," which was produced by Pond Reclamation in this action. Exhibit 344B is a true and correct copy of a January 29, 1998 draft of the "Coal Fines Option Agreement" that I received from Mr. DeMarco.

x. On January 30, 1998, Mr. Rodak performed calculations regarding the Ponds Nos. 4 and 6 coal fines. On February 2, 1998, Mr. Rodak had a telephone call with Shawn Reddington regarding Pond No. 4 data. Mr. Reddington was an in-house consultant for ICPE, with which Steve and Robert Nash were associated and which provided management

and engineering services to the Consol Project. Mr. Rodak's Affidavit in paragraph 147 refers to both the calculations and a note of this call at the page Bates numbered AA022408-410 in Mr. Rodak's journal (Exhibit 1005).

y. On February 9, 1998, Alpine/AGTC received from CoBon a February 3, 1998 preliminary due diligence request from Orrick, on behalf of Providian, to which we assisted CoBon in responding. Exhibit 347 is a true and correct copy of the due diligence request received by Alpine/AGTC.

z. On February 4, 1998, Mr. Rodak and I met with Mr. DeMarco to negotiate the "Coal Fines Supply Agreement" regarding the Pond No. 4 coal fines and the "Coal Fines Option Agreement" that was being proposed in connection with the "Coal Fines Supply Agreement." Later in the day, Mr. Rodak and I met with Consol's marketing department to discuss the project contracts. Mr. Rodak's Affidavit in paragraph 147 refers to notes of these meetings at the pages Bates numbered AA022411-112 in Mr. Rodak's journal (Exhibit 1005). On or about that same day, I received a draft of the "Coal Fines Option Agreement" from Mr. DeMarco.

aa. Also on February 4, 1998, Mr. Rodak received a data request from Energy Ventures on behalf of Providian, to which Mr. Rodak assisted CoBon in responding. Exhibit 351 is Energy Venture's correspondence to Mr. Rodak.

bb. On February 9, 1998, I sent to Mr. DeMarco my and Mr. Rodak's comments to the draft "Coal Fines Option Agreement," and a copy of Orrick's due diligence request as several of the questions pertained to Pond Reclamation. Exhibits 353 and 354 are true and

correct copies of my correspondences to Mr. DeMarco. On that same day, I received from Consol a draft "Coal Pellet Marketing Agreement" that addressed Consol's purchase and marketing of synfuel. I also sent to CoBon for its comments a revised "Coal Fines Supply Agreement" regarding the Pond No. 4 coal fines that I had received from Pond Reclamation. This draft did not include the 18-month, \$4 million option to buy the coal fines, which had been placed in the separate proposed "Coal Fines Option Agreement." Exhibit 357 is a true and correct copy of my February 9, 1998 correspondence to CoBon, with the draft agreement attached. CoBon did not communicate any disagreement with having the option in a separate agreement. I also separately wrote to CoBon on that date regarding several items that I advised should be included in the Project budget CoBon was preparing for Providian. Exhibit 355 is a true and correct copy of my February 9, 1998 correspondence to CoBon regarding the budget.

cc. Mr. Rodak assisted Shawn Reddington in responding to Energy Venture's February 4, 1998 request for due diligence information and, on February 10, 1998, Mr. Rodak received from Mr. Reddington a copy of Mr. Reddington's letter to Energy Ventures responding to Energy Ventures' due diligence request to Mr. Rodak. Exhibit 358 is a true and correct copy of CoBon's February 10, 1998 response.

dd. On February 10, 1998, Mr. Rodak and I met with Mr. DeMarco to discuss the "Coal Fines Supply Agreement" and the "Coal Fines Option Agreement." Mr. Rodak's Affidavit in paragraph 147 refers to a note of this meeting at the page Bates numbered AA022414 in Mr. Rodak's journal (Exhibit 1005).

ee. On February 12, 1998, I sent CoBon a revised draft "Coal Pellet Marketing Agreement" that I had received from Consol, with my comments.

ff. On February 17, 1998, Mr. Rodak and I met with Consol regarding negotiations of the project contracts. Mr. Rodak's Affidavit in paragraph 147 refers to a note of this meeting at the page Bates numbered AA022416 in Mr. Rodak's journal (Exhibit 1005).

gg. Also on February 17, 1998, Mr. Rodak and I received Mr. Reddington's reserve calculations for the Project, which had been prepared with our input.

hh. On February 18, 1998, Mr. Rodak and I met with Mr. DeMarco regarding the "Coal Fines Supply Agreement" and "Coal Fines Option Agreement" regarding Pond No. 4, and then later the same day met with Consol. Mr. Rodak's Affidavit in paragraph 147 refers to a note of these meetings at the page Bates numbered AA022417 in Mr. Rodak's journal (Exhibit 1005). It was at this meeting that Mr. Rodak and I probably executed the "Coal Fines Option Agreement." We left the date of the agreement blank because we did not know when the closing date would be on all of the project contracts involving Consol, and Consol wanted to have the 18-month term of the option start running from the date of the closing.

ii. Also on February 18, 1998, CoBon sent me and Mr. Rodak a draft of Providian's proposed term sheet for its investment in the Project. On February 20, 1998, I sent Mr. Rodak's and my comments to the proposed term sheet to CoBon. Exhibit 366 is a true and correct copy of the document I received from CoBon, and Exhibit 368 is a true and

correct copy of my February 20, 1998 response to CoBon.

jj. On February 19, 1998, Mr. Rodak and I received from CoBon Energy Venture's coal fines supply analysis. The analysis confirmed that Ponds Nos. 4 and 6 contained a high volume of high quality coal fines. Exhibit 367 is a true and correct copy of the document we received from Energy Ventures.

kk. On February 20, 1998, I received from Mr. DeMarco a revised "Coal Fines Supply Agreement" and, as requested, I called Mr. DeMarco to discuss the agreement.

ll. On February 23, 1998, I received from Consol a revised "Coal Pellet Marketing Agreement" for CoBon's consideration.

mm. On February 25, 1998, I sent to CoBon a revised "Coal Pellet Marketing Agreement" that I received from Consol. Exhibit 370 is a true and correct copy of my February 25, 1998 correspondence to CoBon in this regard.

nn. On March 6, 1998, Mr. Rodak reviewed the Pond 4 map. Mr. Rodak's Affidavit in paragraph 147 refers to a note of this review at the page Bates numbered AA022423 in Mr. Rodak's journal (Exhibit 1005).

oo. On March 12, 1998, Mr. Rodak, Steve Nash and I met with Mr. Little regarding the project contracts and the Project. Mr. Rodak's Affidavit in paragraph 147 refers to a note of this meeting at the page Bates numbered AA022425 in Mr. Rodak's journal (Exhibit 1005).

pp. On March 16 through March 20, 1998, CoBon closed on the project contracts with Consol and Pond Reclamation. CoBon (through its project company Robena, LLC or

CoBon Synfuel #2) entered into the “Lease Agreement” with Consol, a “Coal Fines Supply Agreement” with Pond Reclamation, a “Coal Pellet Marketing Agreement” with Consol, and an “Operation and Maintenance Agreement” with Consol. Exhibits 379, 381, 382 and 383, respectively, are true and correct copies of excerpts of these agreements, provided to Alpine/AGTC by CoBon. The “Coal Fines Option Agreement” that had been previously executed also was dated as of March 20, 1998. Exhibit 380 is a true and correct copy of the signed and dated “Coal Fines Option Agreement” that was provided to Alpine/AGTC. At that time, CoBon also closed on a bridge financing agreement with Providian. With this closing, the Robena Project was put in place and financed. CoBon, with Alpine/AGTC’s assistance, had obtained a site, a coals fines supply, and a synfuel purchaser for the Project and had obtained financing for the construction and initial operation of the synfuel facility.

qq. On June 26, 1998, CoBon sold the Consol Project to Providian. The sale agreement was between CoBon Synfuel No. 2, LLC, the seller and CoBon’s project company for the Consol Project, and Robena LP, the buyer, which was almost entirely owned by Providian. The sale was accomplished by having CoBon Synfuel #2 sell its membership interest in Robena, LLC. Robena LLC was the project company that owned the assets of the Project. Prior to the sale, Robena, LLC’s sole member was CoBon Synfuel #2. CoBon became the general partner of Robena LP through CoBon Synfuel #2. At the same time as the sale, Covol licensed the Consol Project to use the Covol patented process. Exhibit 470 is a true and correct copy of excerpts of the June 26, 1998 Sale and Purchase Agreement. Exhibit 471 is a true and correct copy of excerpts of the June 26, 1998 license agreement for

the Project.

32. Exhibit 1006 is a true and correct copy of an affidavit by Ron FlorJancic relating to the Consol Project. This affidavit was filed in support of Alpine/AGTC's motion for summary judgment in CoBon's first action, filed in November 2002, relating to the Consulting Agreement.

33. The Consol Project resulted in the development of a synfuel facility that qualified for Section 29 tax credit treatment, located at Consol's Robena site in Green County, Pennsylvania (the "Robena Synfuel Facility"). The Robena Synfuel Facility was placed in service before the Section 29 deadline of July 1, 1998 for placing synfuel facilities in service. Providian received a favorable PLR for the Project. Exhibit 533 is a true and correct copy of the PLR for the Consol Project.

34. Exhibit 468 is a true and correct copy of a June 25, 1998 press release by CoBon regarding the completion of the Robena Synfuel Facility, which was produced by CoBon in this action. In this press release, CoBon stated: "This event culminates a major effort by Consol, CoBon, Providian, AGTC and Alpine Coal to plan and implement this project. We are delighted to be associated with individuals and companies of this high caliber."

35. CoBon never notified or informed Alpine/AGTC that CoBon had not participated in the Consol Project or that the development of the Robena Synfuel Facility was excluded from the Consulting Agreement, either as a basis for paying Alpine/AGTC or such that Alpine/AGTC's assistance and support on the Project was not performance of their scope of work under the Consulting Agreement. Mr. Rodak and I always understood, and CoBon consistently demonstrated an understanding, that CoBon had participated in the development of the Robena Synfuel Facility such that the Consol Project was covered by the Consulting Agreement. The basis for this included

the following:

a. CoBon entered into the project contracts for the Consol Project. The air quality permit for Project (the only new permit obtained for the Project) was obtained by CoBon and issued in CoBon's name. CoBon sold the Consol Project to Providian. CoBon became the general partner of the CoBon Project for its operation. I understand that CoBon participated in proceeds for tax credits received by Providian from its sale of the synfuel facility of the Consol Project.

b. CoBon referred to the Consol Project as its synfuel project. The November 18, 1999 "Agreement" between CoBon and Covol (Exhibit 806) stated that a portion of CoBon's license capacity was used to develop the Consol Project.

36. The Robena Synfuel Facility operated at a loss while it was owned by Providian. As discussed in paragraphs 74 and 76 of Mr. Rodak's affidavit, the Covol patented process initially did not consistently and economically produce agglomerated synfuel. Also, there were significant labor issues at that synfuel facility, Consol's on-site management was not responsive to or cooperative regarding production issues, the synfuel production suffered from not being able to use the intended coal fines sources as feedstock (the Consol and Pond Reclamation coal fines located in Ponds Nos. 6 and 4 at the Robena site) pending completion of the coal fines wash facility that was to process those fines, and after that wash facility was completed in March 2000, recovery rates from the Ponds were low because waste material from the wash facility was pumped back to the ponds (which resulted in the waste material being pumped back to the wash facility). Exhibit 712 is a true and correct copy of a June 25, 1999 CoBon letter to Providian that addressed some of these production

issues. Exhibit 892 is a true and correct copy of a September 9, 2000 e-mail from Mr. Deane of Palmer to CoBon, which was forwarded to me, which addressed Consol's non-responsiveness. Exhibit 905 is a true and correct copy of a November 17, 2000 letter from Palmer to CoBon that addressed several production issues. As described in Mr. Rodak's Affidavit, the Robena Synfuel Facility was successful after it was sold by Providian in August 2002 and moved to another location.

E. No Synfuel Project Failed From Missing The June 30, 1998 Section 29 Deadline

37. The Grant Town Project, the Bel Air Project, the Miller Project, the original and subsequent Mon View Projects and the Nemacolin Project did not result in the development of any synfuel facilities. However, none of these six synfuel Projects failed because CoBon missed the Section 29 deadline of July 1, 1998 for placing synfuel facilities in service. Instead, the six synfuel Projects on which Alpine/AGTC worked but which did not result in the development of synfuel facilities were not developed either as a result of CoBon's decision to forego developing the Projects in favor of the other projects that were going forward at the relevant time (due to the original 1.5 million ton cap on the amount of capacity CoBon could develop or authorize for development under its September 10, 1996 License Agreement with Covol), or as a result of Double Day's failure to develop the Miller and original Mon View Projects.

F. CoBon Never Gave Notice Of A Breach

38. CoBon never notified AGTC that Alpine/AGTC had materially breached the Consulting Agreement.

39. CoBon never notified or otherwise informed AGTC that the synfuel facilities of the Consol, Pace or PBS Projects had not been developed as contemplated by CoBon at the time the

Consulting Agreement was entered into such that: (a) Alpine/AGTC had not performed their scope of work under the Consulting Agreement; or (b) any proceeds received by CoBon from these facilities were not a basis for paying Alpine/AGTC under the Consulting Agreement.

40. CoBon never notified or otherwise informed AGTC that any synfuel project that CoBon pursued or considered after August 20, 1996, or that any of Alpine/AGTC's work on any synfuel project between August 1996 and July 1, 1998, fell outside the Consulting Agreement for any reason.

G. CoBon's Affirmations That Alpine/AGTC Had Performed

41. After each of the PBS, Bel Air and Consol Projects were put in place, CoBon, in draft marketing material for each of these projects, identified me and Mr. Rodak as members of the "key CoBon management and consulting team" which, CoBon wrote, "provides a solid management background and furthers the probability of the Project's success." Exhibits 127, 141, 183, 349 are true and correct copy of excerpts of these marketing materials.

42. After entering into the Consulting Agreement and prior to November 2002, CoBon consistently demonstrated to Alpine/AGTC an intention that Alpine/AGTC would be paid under the Consulting Agreement from proceeds received by CoBon from the synfuel facilities of the PBS, Pace, and Consol Projects. The basis for this includes the events described in the following paragraphs, and in paragraphs 91 to 94 of Mr. Rodak's Affidavit describing Alpine's comments to a PBS Project pro forma, CoBon's March 2001 request for Alpine's assistance in getting PP&L to purchase Covol binder agent for the PBS Project capacity over 650,000 tons per year, and telephone conversations with Steve Nash concerning the Pace Project.

43. After entering into the Consulting Agreement and prior to November 2002, CoBon never informed Alpine/AGTC that Alpine/AGTC would not be paid under the Consulting Agreement from proceeds received by CoBon from the PBS, Pace, and Consol Projects synfuel facilities.

44. Exhibit 222 is a true and correct copy of a July 1997 pro-forma for the PBS Project prepared for CoBon by its financial advisor, Coalco, produced by CoBon in this action. In the pro forma, tax credit payments to Alpine/AGTC were listed as a separate line item.

45. Exhibit 126 is a true and correct copy of a January 10, 1997 letter from CoBon. The letter addressed CoBon's December 1996 agreement with Covol preserving CoBon's right to be paid for its participation in the Pace Project. CoBon stated in the letter to me that "you stand to benefit directly and solely due to CoBon's last minute negotiation of the deal." Mr. Rodak and I understood CoBon's statement to confirm that Alpine/AGTC would be paid from CoBon's proceeds from the Pace Project.

46. Steve Nash informed me and Mr. Rodak that, in March 1997, CoBon had to pledge its proceeds from the Pace Project as collateral for the Providian bridge financing for the Consol Project. On April 7, 1998, I wrote a letter to Steve Nash of CoBon in which I stated, "As you have repeatedly stated to me, our goal should be to protect the Pace payments at all times." I was referring to my numerous conversations with Mr. Nash in which he acknowledged Alpine/AGTC's interest in a share of CoBon's proceeds from the Pace Project under the Consulting Agreement and the need to protect these proceeds by making the Consol Project succeed. Neither Steve Nash nor any other representative of CoBon ever informed me of any disagreement with my statement in this letter.

Exhibit 402 is a true and correct copy of my April 7, 1998 letter to Mr. Nash.

47. CoBon sent Mr. Rodak and me copies of CoBon's correspondences with Pace in 1997 regarding obtaining payment from the Pace Project. We took this as confirmation that Alpine/AGTC would participate in CoBon's proceeds from the Pace Project. As an example, Exhibit 257 is a true and correct copy of a September 30, 1997 letter from CoBon to Pace and Covol, which CoBon faxed to us on October 1, 1997. Exhibit 313 is a true and correct copy of a December 10, 1997 letter from CoBon to Pace, which CoBon faxed to Mr. Rodak on December 11, 1997.

48. Exhibits 868 and 869 are true and correct copies of May 24, 2000 letters from CoBon to Alpine/AGTC, enclosing checks made out to Alpine and AGTC, each in the amount of \$10,000. CoBon, in the accompanying check stubs, identified the checks as "Advance Tax Credit Payments." CoBon, in the cover letter with the checks, stated that the payments were "an advance payment for anticipated Pace and/or PBS tax credits payments due to [Alpine/AGTC]." Based upon our communications with Steve Nash, Mr. Rodak and I considered that the checks were advances of "Consulting Fees" under the Consulting Agreement, and were advances because, at the time the payments were made, CoBon had not yet received the anticipated proceeds for tax credits from the Pace and PBS Projects synfuel facilities upon which the payments were based.

49. In August, November and December 2001, CoBon made seven more payments to Alpine/AGTC, which CoBon identified in the accompanying check stubs as "Consulting Fee Advances," "Advance Consulting Fees," "Advance License Fees," or "Advance Tax Credit Payments." Considering the nine payments made by CoBon in May 2000 and August, November and December 2001, CoBon paid Alpine/AGTC a total of \$438,000. Exhibit 1008 includes true and

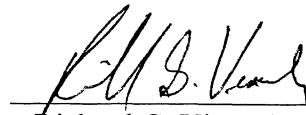
correct copies of checks and a check summary shown to me at my deposition on August 28, 2008 and marked as Deposition Exhibit Nos. 235 and 236 submitted by CoBon to Alpine/AGTC regarding these payments. Based upon our communications with Steve Nash, Mr. Rodak and I considered that the payments were payments of "Consulting Fees" owed or that would be owed under the Consulting Agreement. Mr. Nash of CoBon told us that CoBon had received proceeds for tax credits upon which CoBon was making the payments to Alpine/AGTC. Mr. Rodak and I understood from Mr. Nash that the seven payments made after May 2000 were "advances" only because the payments were not exact calculations of the "Consulting Fees" that Alpine/AGTC were then or soon to be due under the Consulting Agreement at the times of the payments, but were approximations by CoBon of the "Consulting Fees" Alpine/AGTC were then or soon to be owed. Mr. Rodak and I understood from Mr. Nash that Alpine/AGTC would subsequently meet with CoBon for an accounting of the exact amount of "Consulting Fees" that were owed to Alpine/AGTC at the time of the accounting. There were no loan documents executed in connection with any of the nine payments that CoBon made under the Consulting Agreement. These nine payments were made either to Alpine or AGTC, and never to me or Mr. Rodak personally.

50. CoBon paid a total of \$65,000 to Alpine/AGTC in four installment payments between August 4, 1997 and January 1, 1998. Steve Nash of CoBon instructed that the advances would be invoiced, paid and recorded as exploration expenses for the Consol Project. CoBon treated these payments as advances under the Consulting Agreement. There were no loan documents executed in connection with the payments. Mr. Rodak and I did not consider the payments to be loans. The payments were made by CoBon to AGTC, not me personally (Exhibit 1008).


51. This \$65,000, plus the \$438,000 in "Consulting Fees" paid to Alpine/AGTC in May 2000 and August, November and December 2001, were the only amounts paid by CoBon to Alpine/AGTC under the Consulting Agreement. Exhibit 1009 is a true and correct response by CoBon to Alpine/AGTC's Requests for Admission regarding whether CoBon kept any proceeds in an escrow account for the benefit of Alpine/AGTC.

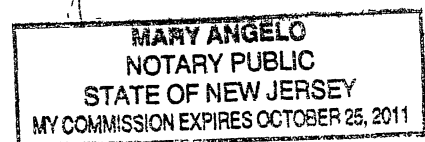
I declare under penalty of perjury that the foregoing is true and correct.

DATED: October 30, 2008


Richard G. Visovsky

SUBSCRIBED AND SWORN to before me on this 30 day of October, 2008.


NOTARY PUBLIC
Residing at: Princeton



CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2008, I caused a true and correct copy of the foregoing document **AFFIDAVIT OF RICHARD G. VISOVSKY REGARDING MOTIONS FOR SUMMARY JUDGMENT FILED UNDER SEAL** to be served on the following via the method indicated:

William Kelly Nash, Esq.
Evan A. Schmutz, Esq.
Curtis R. Hussey, Esq.
HILL, JOHNSON & SCHMUTZ, L.C.
RiverView Plaza, Suite 300
4844 North 300 West
Provo, UT 84604
Attorneys for Plaintiff

☐ First class, postage prepaid
U.S. Mail
☐ Facsimile (801/375-3865)
☒ Hand Delivery

